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NOMINATION OF HARVEY L. PITT

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

THE NOMINATION OF HARVEY L. PITT, OF WASHINGTON, DC, TO BE A MEMBER OF THE U.S. SECURITIES AND EXCHANGE COMMISSION

JULY 19, 2001

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C O N T E N T S

THURSDAY, JULY 19, 2001

	Page
Opening statement of Chairman Sarbanes	1
Prepared statement	37
Opening statements, comments, or prepared statements of:	
Senator Gramm	3
Senator Shelby	4
Senator Corzine	4
Prepared statement	37
Senator Schumer	4
Senator Dodd	6
Senator Enzi	8
Prepared statement	38
Senator Miller	14
Senator Bennett	19

NOMINEE

Harvey L. Pitt, of Washington, DC, to be a Member of the U.S. Securities and Exchange Commission	8
Prepared statement	39
Biographical sketch of nominee	41
Response to written questions of:	
Senator Sarbanes	95
Senator Schumer	97
Senator Miller	98
Senator Crapo	99
Senator Susan M. Collins	100

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

S. 1189	103

NOMINATION OF HARVEY L. PITT, OF WASHINGTON, DC TO BE A MEMBER OF THE U.S. SECURITIES AND EXCHANGE COMMISSION

THURSDAY, JULY 19, 2001

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:10 a.m., in room SD–538 of the Dirksen Senate Office Building, Senator Paul S. Sarbanes (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN PAUL S. SARBANES

Chairman SARBANES. The Committee will come to order.

I am very pleased to welcome Harvey Pitt this morning before the Committee on Banking, Housing, and Urban Affairs.

The President has nominated Mr. Pitt to be a Member of the Securities and Exchange Commission to complete, first, the unexpired term of Paul Carey and then he has also been nominated for a full term upon the expiration of that term.

The Committee has engaged in that procedure in the past and it will ensure in this instance that there is a quorum down at the Commission.

We have talked with the White House and we are anxious to work with them to try and get a full complement at the SEC. We are in the situation now where the two Commissioners who are down there, their terms have actually expired, but they are serving under a hold-over provision that is in the statute.

We have three vacancies. And of course, now Mr. Pitt will be filling one of those.

We are anxious, and we have indicated as much to the Administration, to work with them in trying to bring the SEC up to full strength. I don't think I have to go into any explanation why that should be considered an important objective. I know it is one that Senator Gramm and other Members of the Committee all share.

The President has also indicated his intention to name Mr. Pitt as the Chairman of the Commission upon his confirmation as a Member of the Commission. Under the statute, the President has that authority. We do not confirm for Chairman. We confirm the Members.

The way the Commission is structured, one term expires in June of each year. If the Member does not serve out the term, someone

appointed to that position fills the unexpired term. So in June of every year, there is always a vacancy on the SEC, and at the moment, we have a number of vacancies we are anxious to fill.

Mr. Pitt's papers were completed on July 10, so we are holding this hearing, and I think everyone would agree, very promptly. Our colleague, Senator Schumer, will be introducing him shortly.

I just noticed that Mr. Pitt earned his bachelor's degree from Brooklyn College and his law degree from St. John's University. We have two Brooklyn boys at the table here this morning.

[Laughter.]

Mr. Pitt has worked with the securities laws for his entire professional career. After graduating from law school in 1968, he went to work at the SEC, rose from Staff Attorney in the Office of the General Counsel, through a succession of important positions at the SEC, and eventually was named the General Counsel of the SEC, the youngest General Counsel in the SEC's history.

In 1978, after a decade at the SEC, he went into private practice with the law firm of Fried, Frank, Harris, Shriver & Jacobson, and he has been there ever since. In private practice, he has represented virtually every segment of the securities markets.

He has actively published on securities issues, coauthored two legal treatises on financial services, and coauthored over 300 published articles—it is a very extensive contribution to securities law.

Mr. Pitt belongs to several legal, social, and educational organizations. He has served on the Board of Trustees at Cardozo Law School, as Chairman of the Practicing Law Institute Annual Securities Law Institute, as Chairman of the Securities Regulation Institute of Northwestern University School of Law, and he has been the President of the SEC Historical Society.

This nomination obviously gives him the opportunity to write some of that SEC history himself.

The United States securities markets are the envy of the world. The Chairman of the Commission and his colleagues play a critical role in promoting the strength and efficiency of these markets and inspiring trust and confidence among investors. I believe strongly that protecting investors, ensuring the fairness and integrity of our securities markets, and vigorously enforcing the securities laws are primary functions of the Commission.

Citizens and institutions invest their money in stocks traded on these markets for a number of reasons. They trust the accuracy of the income statements and balance sheets that public companies file. They rely on the certification of financial statements by accountants. They operate on the premise that public companies give them fair disclosure, that they do not make material information available to some investors before others. They trust market and exchange professionals to execute their orders fairly, without stepping ahead or manipulating the market. And they assume that the SEC and the self-regulatory organizations under its authority are vigorously enforcing the laws, developing methods to detect and prosecute violators, and imposing punishment in those cases where it is warranted.

I think it is fair to say that Mr. Pitt's work, first at the SEC and subsequently representing clients, in many instances before the SEC, give him an extraordinary knowledge of both the Federal se-

curities laws, as well as the various conducts which could potentially harm investors and markets. We trust that if confirmed, he will use this knowledge and experience to better protect investors and to enhance the quality of the securities markets. I am very pleased to welcome him to the Committee this morning.

I yield to Senator Gramm.

STATEMENT OF SENATOR PHIL GRAMM

Senator GRAMM. Mr. Chairman, let me thank you for holding this timely hearing. In fact, I think of all the committees of the Senate, this Committee has one of the best records of holding timely hearings on the President's nominees, and I want to personally thank you for your willingness and eagerness to get people on the job to do the work of the American Government.

We have some 155 nominees now pending in the Senate, and we have a problem in terms of getting people on the job to do the work of our Government. But this Committee has not been a contributor to that problem, and I want to personally thank you.

It seems to me that we have never had a nominee for Chairman of the Securities and Exchange Commission better qualified than Harvey Pitt. He is demonstrably perhaps the Nation's premier security lawyer.

Furthermore, I don't know a better background to now head the SEC than having been the General Counsel of the SEC and, later, General Counsel of the Division of Market Regulation, and then, having carried out the active prosecution of people who violated the securities laws, and later in your career having represented principal interests in cases before the SEC.

I forget what the old song of the 1960's was, but Harvey Pitt has seen it from both sides.

One of the things that always worries me about nominees is that they end up being captured by the staff. Now there is nothing wrong with staff. The SEC has many dedicated, able people.

Chairman SARBANES. As do Senators.

[Laughter.]

Senator GRAMM. As do Senators. That is exactly right.

[Laughter.]

I think I can say this without question about Harvey Pitt, that there will be no person at the SEC who knows more about the job of being Chairman than he does.

Many people in the media have tried to speculate, based on Harvey Pitt's background, about whose guy he is. But I think that the plain answer is, Harvey Pitt is his own guy. And that is who we want as Chairman.

Finally, let me say, I notice that people come before our Committee who are making tremendous financial sacrifices to serve the country. It is a great testament to the love that Americans have for their country, that they are willing to give up successful careers and happy private lives to serve and give back to the system that has meant so much to them.

Mr. Pitt, I want to thank you for being willing to make that sacrifice, for being willing to serve the greatest country in the history of the world. And no part of this country is more important to

working people, blue-collar workers, than having the most successful securities markets in history.

Your charge is a very important one. I look forward to working with you in carrying out that charge, and I want to thank you for your willingness to serve.

Mr. PITT. Thank you, Senator.

Chairman SARBANES. Are there any other Members who wish to make a statement?

Senator Shelby.

COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Mr. Chairman, I will be brief. I just want to say, Mr. Pitt, that I look forward to supporting your nomination. You are eminently qualified, as Senator Gramm and others have said. Not only have you been a practicing attorney at the bar, with numerous publications to your credit, but also you have been before this Committee many, many times, and you are an eminent scholar in this area. I look forward to supporting you here and also on the floor. I believe you will bring unique qualifications—background and experience—that I have never seen before the SEC.

Thank you.

Chairman SARBANES. Senator Corzine.

COMMENTS OF SENATOR JON S. CORZINE

Senator CORZINE. Yes, I will be brief. Thank you, Mr. Chairman, for holding this timely hearing. I think it is important to have a fully staffed and focused SEC. It is a pleasure to welcome Mr. Pitt.

I want to underscore and second what Senator Gramm talked about. It is terrific that you have the willingness to serve our country in this position.

As our conversation indicated last week, the fair-mindedness and balance with which you approach this I think is terrific. The integrity of these markets, the fairness with which they have to operate, I think is absolutely essential for the allocation of capital in our capital markets. And I look forward to your service there.

I would just point out, though, as I think we talked about, maybe the ultimate test will come when and if, and hopefully, we won't have to face this, the crisis that often and has repeatedly occurred in our markets come to pass. And I hope that we can do everything here to help you make that an easier process to occur.

Chairman SARBANES. Thank you very much.

Senator Schumer, we would be happy to have you present Mr. Pitt to the Committee.

STATEMENT OF SENATOR CHARLES E. SCHUMER

Senator SCHUMER. Thank you, Mr. Chairman. And I also want to thank you for giving me the opportunity to introduce a fellow New Yorker—fellow Brooklynite, as you mentioned.

Chairman SARBANES. Yes, we noticed that.

[Laughter.]

Senator SCHUMER. Whose willingness to accept the nomination to become the new Chairman of the SEC has produced an outcry of unanimous support and excitement, even—it is rare that you would nominate someone to the SEC and the word that would follow

would be excitement, but because of Mr. Pitt's superior qualifications, it is.

And so, I am pleased to introduce Mr. Harvey Pitt in his first of many appearances as a potential Member of the SEC, before the Senate Banking Committee.

I also want to thank you for holding this hearing with such speed because his confirmation cannot happen soon enough.

It is difficult to decide, my colleagues, which of his qualifications should be considered most heavily in confirming his nomination—his experience as the premier securities lawyer in the United States, his reputation as a fair and honorable man, his respect for the mission of the SEC, or his innate intelligence. I would like to think it is his childhood in Brooklyn at the top of the list.

[Laughter.]

I think that our paths crossed there in the summer of 1996 when Harvey was selling cookies. That is how he started, and I was eating them. But, anyway, from cookies to credit derivatives, his career is an impressive one. The list of his accomplishments has been well summarized by the Chairman.

I would note that a measure of his success in law is how prolific he is. The list alone of Mr. Harvey Pitt's publication weighs about 3.5 pounds.

[Laughter.]

He has considered and reconsidered, researched and opined on every facet of the United States securities law. He is without question the most talented and respected securities lawyer in the United States today. And I want you to know, Harvey, that we are honored that you are willing to serve the U.S. Government and the U.S. investors.

When I came up here with the honor of introducing him, he said to me, thanks for doing this. And I said, no, no. Thank you for doing this. Because as Senator Gramm said, to so many of us, the willingness of talented citizens like Mr. Pitt, to make sacrifices to work in the public sector is one of the most amazing things about American democracy.

And Mr. Chairman, at a time when we need excellence in Government, Mr. Pitt personifies that excellence. His reputation, deservedly so, has achieved, at least in securities law, almost god-like proportions. He could well be described as the Zeus of his field.

The timing could not be better. In recent years, we have witnessed dramatic changes to the securities markets, as you have mentioned, Mr. Chairman. Globalization and new technology are markedly refashioning entire industries and in the process, creating highly profitable new business models, while entirely eliminating others.

The securities markets are changing before our very eyes. And the changes are swift and the competition, which is increasingly international, a real challenge for the SEC, is fierce.

I know that Mr. Pitt shares my concern that the United States retain the preeminent securities markets of the world. And I join my colleagues in looking forward to his stewardship of the SEC in the dawning years of the 21st Century.

In short, Mr. Chairman, somewhat like Churchill, he is a man for his times.

I look forward to his courageous leadership in the years ahead. I thank you for the honor of introducing him, and I will now resume my seat as a Member of the Banking Committee to continue with the rest of the proceedings.

Chairman SARBANES. Thank you very much, Senator Schumer.

We have been joined by Senator Dodd, who is the Chairman of the Securities Subcommittee of the Committee. And so, Mr. Pitt, before I turn to you, I am going to yield to Senator Dodd, who has a statement.

STATEMENT OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you very much, Mr. Chairman.

We have another hearing going on this morning and I apologize for arriving a bit late.

Mr. Pitt, let me welcome you to the Committee and thank you for your willingness to accept the nomination of the President. And I congratulate him for submitting your name.

Mr. Chairman, once again, let me commend you for the rapid fashion in which you have placed this nomination on the agenda so that we can consider very promptly Harvey Pitt's nomination. He obviously has a wonderful reputation, as we just heard from our colleague from New York talk about his credentials. Mr. Pitt, we are pleased that you are before us.

Mr. Chairman, before I make some brief comments about Mr. Harvey Pitt, I want to thank Laura Unger. She has been the Acting Chair of the SEC and a former staff member of our Committee here for a number of years and has done a very, very fine job during her tenure. I would just like the record to reflect that. I know that all of us feel that way about Laura. She has done a very good job. So, I wanted to mention her, too, this morning.

Also a couple of comments, if I could, about your predecessor, Mr. Arthur Levitt, who I know you know very well. Arthur Levitt did a remarkably fine job as the Chairman of the SEC. And all of us up here in the 8 years of his tenure enjoyed working with him. I know my good friend, Phil Gramm, with whom I shared either the Chair or Co-Chair, Ranking Member position on the Securities Subcommittee for more than a decade, I think, at one time or another, specifically enjoyed his work, as I know the Chairman did, Dick Shelby, and others.

We all had at various times a lot of contact and involvement with Arthur Levitt. He did a very, very fine job.

We had very few chairmen, Harvey, over the years, and I know I am preaching to the choir when I say this because I know you know him well and have a high regard for him as well. But he was such an aggressive advocate in creating the best possible capital markets for the small, individual investors. Under his tenure, the Commission refocused its efforts on investor protection. That means both the large institutional investors, as well as the small retail investors.

One of the things that he did that you and I talked about the other day when you graciously came by the office was getting out and communicating with the public at large.

The great news of recent years, of course, has been the explosion of average citizens becoming involved in the markets. This is no

longer the exclusive domain of just the super-rich. It has been a terrific revolution that has occurred.

One of the things that Arthur Levitt did was to get out and talk about this issue with average people, held town meetings. I know he held them around the country. He held one in my State that I attended. I think we had several thousand average people show up to listen and discuss matters before the Securities and Exchange Commission.

Now, you cannot do this all the time, but the idea that you would reach out to people and use language beyond the discourse of an academic or someone who would know the intricacies of regulation, FD, and so forth.

I was going to use some of the lingo of a securities lawyer, but I don't want to offend you in any way, Mr. Pitt.

[Laughter.]

But you know what I am talking about here, talking about in language that average people can understand.

So, at any rate, I hope that you will continue doing that. I hope other Members of the Commission will. It has been a very valuable contribution.

Let me just add to the kudos that I know have been expressed about your nomination, obviously, you are tremendously talented. You have dedicated a professional life to this industry and to the people who are involved in it.

We tried to read the voluminous amount of material since the announcement of your nomination, even all of our well-intended staff could not get through all of the information. You have really been rather prolific in your discussions and discourses on the subject matter.

I am very excited about your nomination. I look forward to working with you as the Chairman of the Subcommittee dealing with the securities industry.

Last, just again, the point that has been made over and over again. The reason the world comes to the United States, the reason that our markets are as popular as they are, is not always because it is the best rate of return. It has been because people have such a high degree of confidence in our markets. People come to this country because they have a great deal of faith that while they do not have a right to necessarily win on every investment they make, they know they are going to be treated fairly.

The transparency of our markets, the soundness of them are so tremendously valuable. And each steward who assumes the Chairmanship of the Securities and Exchange Commission bears the lion's share of burden of sustaining that impression that has been a continuum over the years. It is a very heavy burden. And all of us up here can participate with you and try to continue that image, that reputation we have as a country.

But particularly, it is important for the Chairman.

I know based on your experience and background, that you care about that and all of us up on this side of the dais want to help you succeed. And so, I look forward very much to working with you.

Thank you, Mr. Chairman.

Chairman SARBANES. Senator Enzi.

COMMENTS OF SENATOR MICHAEL B. ENZI

Senator ENZI. Mr. Chairman, I just want to thank you for expeditiously holding this hearing, and I would submit a statement for the record.

Chairman SARBANES. Very good. Thank you very much. All the statements will be included in the record.

Mr. Pitt, it is the practice of this Committee to swear in the nominees. I would ask you to stand.

Do you swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PITT. I do.

Chairman SARBANES. Do you agree to appear and testify before any duly-constituted committee of the Senate?

Mr. PITT. Yes.

Chairman SARBANES. Thank you very much. We would be very pleased to hear from you. And if at any point you would like to introduce members of your family who may be here, we would be very pleased to acknowledge them.

STATEMENT OF HARVEY L. PITT, OF WASHINGTON, DC TO BE A MEMBER OF THE U.S. SECURITIES AND EXCHANGE COMMISSION

Mr. PITT. Thank you, Mr. Chairman, and I would like to do that in just one second.

I appear before you today with great respect and humility. I appreciate all the kind words. Unfortunately, I doubt that there is anybody who is deserving of those accolades, but I appreciate the kind words, nonetheless.

I am here to seek your confirmation of President Bush's nomination of me to be a Member of the SEC. I want to express my deep gratitude to the President for the honor that he has accorded me by this nomination, as well as by his intention to appoint me as Chairman, if I am fortunate enough to be confirmed by this Committee. This is a remarkable honor for me. It is daunting and awe-inspiring.

I do want to thank you, Mr. Chairman, Senator Gramm, and the Members of the Committee for your support, for your kind words, and for the expeditious scheduling of this hearing. I am also particularly grateful to Senator Schumer, my fellow Brooklynite, for his kind introduction of me to the Committee.

With your permission, I would like to point out some of the members of my family who are here to witness this important hearing. First, I would like to point to my wife and best friend, Saree Ruffin Pitt. Next, my father, who is still from Brooklyn.

[Laughter.]

And who has just recently celebrated his 87th birthday. Without my father, I wouldn't be here in many, many ways.

[Laughter.]

His friend, Harriet Richter, who is also from Brooklyn. Senator Schumer has a fair number of constituents here today.

[Laughter.]

I would also like to point out my four children, who are my pride and joy: Jonathan, Emily, Robert, and Sally.

Senator DODD. Is it Robert who we had the test with on whether you are doing well on television?

Mr. PITT. Exactly, yes.

[Laughter.]

My family, if nothing else, is wonderful for keeping me with a good sense of humility.

I would like to also acknowledge my sister, Elaine Evans, and her family, my brother-in-law, Charles Evans, and my niece, Hillary Evans, her husband, Sal Graziano, Seth Evans and Gideon Evans, all of whom have made the trek to be here today.

And I thank you for giving me that opportunity.

Chairman SARBANES. We are very pleased to have all of you.

Robert, that spontaneous reaction of yours was pretty good. We all watched it carefully here.

[Laughter.]

Senator GRAMM. He is certainly sure he has a favorable crowd.

[Laughter.]

Senator DODD. One day, he may sit on this side of the dais.

[Laughter.]

Mr. PITT. Senator Dodd was referring to the fact that in our meeting, I indicated that Robert had disdained one of my TV appearances, saying, "Nobody really is very interested in what you say. It is boring."

[Laughter.]

So, I have taken that to heart and I will try to make my comments a bit more interesting.

I would like to start by stating that I come before this Committee with enormous respect for the critical role that Congress plays and, in particular, this Committee plays, with respect to the important multiple missions that the SEC has before it.

If I am confirmed, I want to pledge to you sincerely and honestly that I will work with you and the Administration to ensure that the Commission is a partner, an independent partner, to be sure, but not an adversary, in our mutual desire to maintain our capital markets as the best in the world at helping our corporations raise needed capital and succeed in a global, competitive market, and to ensure all American citizens and everyone else who trades in our markets of the fairness and the integrity of our marketplace.

I think this is a critical time in the history of the SEC. And my view is that working together, the SEC and the Congress and the Administration can fashion an agenda that will make the next decade of the SEC as remarkably successful as the last seven decades of the agency's history have been.

I sit here before you as a first-generation American. I benefited from the many opportunities that this country offers to people of limited means to achieve a piece of the American Dream.

The SEC plays an incredibly important role in overseeing the markets that enable millions of Americans to fuel that dream. And as I believe the Chairman has noted, we have seen a dramatic shift from the time that I first entered this field, when 70 percent of the trades were institutional, to a point now where individual investors, either directly or through financial intermediaries, comprise the overwhelming majority of our markets.

Over these past 33 years, working first at the SEC, and then in the private sector, I have been blessed with wonderful colleagues. And I have been fortunate to have a broad exposure to a variety of securities law issues. Nearly a quarter of a century ago, I was privileged to be appointed General Counsel of the SEC, and that was an experience that has shaped my career and my outlook on the Federal securities laws.

So having this opportunity, if this Committee will see fit to confirm me, would fulfill a lifetime dream and make it a reality. If I am confirmed, there are several goals that I would pursue.

First, I would commit myself to pursue vigilant enforcement of sound rules that protect all investors against fraudulent, deceptive, and manipulative misconduct. While I am proud of my past legal practice on behalf of a variety of clients, my commitment to the public interest and public investors is genuine, strong, and I assure you, it is all encompassing.

I will be trading some very wonderful clients for the most wonderful client of all—the American investing public.

Second, I will focus on the agency's mission to nurture a climate that is conducive to the creation of capital and encourages it. Many things have changed since the SEC's birth. We have much more competition, both here and abroad, new technology, instantaneous communications, and the creation of vastly more complicated financial instruments. Capital, as we all know, is the lifeblood of innovation and it fuels developmental breakthroughs, higher standards of living, more jobs. I believe the SEC has an important mandate to ensure efficient, cost-effective, and seamless capital-raising.

Third, to protect American capital markets and their participants, I think we need to ensure that our markets remain vigorous and efficient. I would like the SEC, if I am fortunate enough to be confirmed, to lead a review of the requirements it administers and the regulations it imposes, to be certain that they are sound, reasonable, cost-effective, and that they promote competition.

Our securities laws are, in the main, nearly 70 years old. They reflect a time and a state of technology that is light-years away from where we are today. Commission rules have become far more complex. They are, to some extent, increasingly becoming the securities equivalent of the Internal Revenue Code. And I had always thought that I made a decision not to practice tax law for the benefits of being a securities lawyer.

I believe that the Commission, working with this Committee and with its counterpart in the House of Representatives, is obligated to ensure that statutory and regulatory requirements do not needlessly increase costs or drive transactions offshore, where, I might add, investments often lack the protection of laws that the Commission enforces.

Finally, but not least, perhaps most strongly, I believe that Government is a service industry. To make Government meaningful, efficient, and competent, agencies like the SEC have to reflect a commitment to service.

So if I am confirmed, I pledge to you that I will devote my total and untiring efforts to enhancing the Commission's responsiveness to all of its constituencies with respect, professionalism, clarity, and expedition. That is the superb legacy of the SEC to which I am

fully committed. If I am confirmed, I look forward to working with you and I feel confident about our ability, working together, with the best interests of investors, issuers, and the markets in mind, to meet these challenges.

Chairman Sarbanes, Senator Gramm, and Members of the Committee, I thank you sincerely for this opportunity. This is a remarkable day for me as an individual, and I would be pleased to try to answer any questions that the Committee may have.

Chairman SARBANES. Thank you very much for a fine statement.

We will do 5 minute rounds, given the number of Members that are here, then we will go back for a second round if Members wish.

I want to get right to an important question, although you have addressed it to some extent, I think, in your opening statement.

Let me set the stage for it by quoting from *Newsday* just a week ago. It published an article in which it asked: "Does the small investor want this highly paid defender of big Wall Street firms heading the SEC?"

It then went on and reported that small investor advocates are wondering whether you would pursue policies that have the effect of, "Favoring industry behemoths while watering down the investor protection and the corporate accountability initiatives adopted by Arthur Levitt when he ran the SEC during the 1990's."

The article also quoted a spokesman of the Consumer Federation of America as saying: "Harvey Pitt could be great. He could be a disaster."

So, you have the whole range of possibilities there.

The Council of Institutional Investors has written to the Committee and indicated a number of questions they would like discussed with you. But I think the central thrust of it is probably their statement that, "While Pitt's ties to special interest groups should not automatically disqualify him from the job, he should undergo careful questioning to ensure those ties won't impair the SEC's investor protection mission."

Now, you addressed this in part right at the beginning of your statement when you went through the several goals you wanted to discuss. But given the kind of interest in this discussion that is taking place to some extent out there, I would like you to address that question more fully, if you would.

Mr. PITT. Thank you, Senator. I think it is a fair question for me to address. But I am not sure that I agree with the concerns that were expressed in some of the statements you quoted from. For one thing, I come before this Committee not as a neophyte or a novice and not without a record that you can examine.

That record started at the SEC. I learned to be a lawyer at the Securities and Exchange Commission. And in slightly over a decade at the SEC, I was known as a vigorous enforcer of the public interest and the laws that the SEC regulates.

In private practice, I have had a degree of success representing some of the very clients you referred to. But I believe that my success has been attributable to the fact that I tell my clients what they need to hear, not what they want to hear. Sometimes it is unpleasant and I will admit that there have been occasions when I have been fired for expressing my views. But in general, I have found that by telling clients what they need to hear, and having

them perform the way the law expects them to perform and in a way that is sound, pragmatic, and wise, that is also good for their business.

So investor protection and business interests are really co-extensive interests.

I have not worked this hard for 33 years, to come before this Committee, and if I am fortunate enough to be confirmed to the SEC, to risk my reputation by doing anything other than what the public interest requires—I recognize that we may differ at times on what the public interest requires. But my only influence will be the public interest and not a single client that I have ever represented.

Chairman SARBANES. I notice in the report from the Office of Government Ethics, and also from the ethics attorney at the SEC, that you are closing out, or upon confirmation, would close out your connections with the law firm.

I also take it that you would undertake a rather extensive process, as I read it, of closing out investments in any enterprise that might have business before the Securities and Exchange Commission. Is that correct?

Mr. PITT. It is. And I have actually agreed to go beyond what the Office of Government Ethics required. They would not require me to dispose of all of our securities holdings, just some of them. But I think, because the SEC regulates public companies, it is better for the public to know that the Commissioners of the SEC do not have any other financial interest other than the U.S. public and the U.S. Government.

Chairman SARBANES. Thank you very much. My time is up.

Senator Gramm.

Senator GRAMM. Thank you, Mr. Chairman, and again, thank you for this hearing.

Listening to our distinguished Chairman read these questions, there are people in American who think the best qualification for anything is to have just come in on a turnip truck.

[Laughter.]

Quite frankly, when somebody is representing America, I think we deserve the best. And the fact that the most important economic interests in America have hired you is one of the reasons that I was interested in putting you on our payroll.

Let me also say, I appreciate your willingness to bend over backward in dealing with our ethics requirements. But I think sometimes we ask too much. I think it is important that people comply with the law, but if I were in your position, I would not inconvenience myself or discomfort my family. I would not want anybody to be SEC Chairman who had not known enough about wealth to accumulate some of it himself.

[Laughter.]

There are a couple of tough issues I just want to touch on.

First, I want to express a concern and get your views.

I have been very concerned about an effort at the SEC to build a new, massive glass facility near Union Station. The rent per square foot would be very substantially above the current level, I think as much as 50 percent higher, and the amount of space would be substantially increased over its current facilities.

Now here is what makes me nervous. This decision was moving forward when we did not have a single SEC Commissioner whose term had not expired.

Maybe we need this massive new building. One of the things I have suggested, and I would like to recommend to you, is that we have had a move by the Environmental Protection Agency out of a building which is roughly of a similar size to the new one that would be built. I am going to recommend that you look at that building. I don't know whether it is suitable or not. I have never been in it—I stay away from those people.

[Laughter.]

I hope that you will review this move, look at space requirements, look at the payment that would be involved, and look at the whole process whereby we would make such a fundamental move when we did not have a single permanent Commissioner. I would like to get your views on that.

Mr. PITT. Well, Senator, I am aware that several Members of this Committee have expressed concern about the prospective move of the SEC. Obviously, I was not involved with that or consulted about it. But I think when Members of this Committee express concern, the SEC's obligation is to come back to you and to give you complete transparency on what decisions it has made, why it believes those decisions are appropriate, and make sure that it has the benefit of the views of the Members of this Committee.

So while I cannot tell you whether this particular move is the right move or not, or whether, as you suggest, perhaps a move to the soon-to-be-vacated Environmental Protection Agency building is the right move, what I can assure you is that you are entitled to a full explanation of what the Commission did, and you are entitled to our making every effort to allay any concerns that you have legitimately expressed. That is a commitment that I freely give.

Senator GRAMM. You are familiar with staff accounting bulletins and with the whole process at the SEC. I believe in the Administrative Procedures Act. I believe in the process of doing things in the open—where everybody knows what you are doing and where everybody has an input—ultimately produces better results, even though you might benefit from short-circuiting it in the short run. In the long run, process is important.

I have become concerned recently that, while these staff accounting bulletins, historically have dealt with very small tweaking of standards and do not entail a due-process procedure, increasingly, some of the changes being made are viewed by the industry as substantial.

Do you support the general principle that if we are going to have changes in accounting standards, there ought to be public input, and we ought to have a vote by the Commission on it?

Now, I understand there is a gray area when making these small changes. But I am concerned that we are moving into an area where we are ending due process, which is so important.

When that occurs people come to Congress, instead of using a due-process procedure.

I would like to get your views on that.

Mr. PITT. Senator, one of the things I hope I could bring to this job if I am confirmed is the fact that my background in the private

sector has given me entre to all of the major constituencies of the SEC, including investor groups.

I believe that Government does its best when its regulations are perceived as being thoughtful, as being well-written, clearly understandable, and having taken account of legitimate concerns that a variety of constituencies may reflect.

So, I believe very deeply in the notion of having a dialogue. That is what I meant when I said in my opening statement that I do not want to see an SEC that is adversarial, adversarial to this Committee, adversarial to the Administration, adversarial to the businesses it regulates, and certainly not adversarial to the investors it has to protect. I feel very strongly that having a continuing dialogue and making sure that we understand the substance of people's views who have to live with the rules that the SEC will craft is critical.

I will also say that staff accounting bulletins, putting aside the issue you raised, which I believe is one that has to be looked at, follow a remarkable tradition of the SEC, which has been its willingness to provide informal advice to people to help them expedite transactions.

The concern you raise is that the initial concept of informal advice may have become, in a sense, an alternative for rulemaking without the benefits of rulemaking.

I think when the agency adopts rules or it states new positions, it ought to do so only after it has given the public an opportunity to be heard and to understand why it is proposing what it is proposing, unless there is some emergency.

Senator GRAMM. Thank you.

Thank you, Mr. Chairman.

Chairman SARBANES. Senator Miller.

COMMENTS OF SENATOR ZELL MILLER

Senator MILLER. First of all, thank you very much for being willing to serve in the arena.

My question has to do with accounting standards, and Senator Gramm had a question on it and of course, the SEC plays a very significant role in accounting standards.

What is your view about the international accounting standards that are now being developed, I understand, by the International Standards Board? What do you think about that? What about their use in the United States? Would you mind giving us your thoughts? I am just curious about that.

Mr. PITT. There is a clear need for the SEC to participate with other nations that have organized securities markets and sophisticated regulations, to make sure that global competition is fair and that the United States can compete, not just for U.S. companies that need to raise capital, but for U.S. marketplaces that now compete globally.

Our exchanges and over-the-counter markets are now under serious competition from abroad. One of the best things the United States has going for it are very important standards for financial reporting.

So the obligation is to figure out a way to allow the SEC and this country to be part of a community of nations to allow fair competition and yet, not allow investor protection to be weakened.

If I had the answer right now, I would surely share it with you, but I don't.

That is the tension. But I think that the Commission has to be a participant in the process. We must try to explain our standards and try to make it possible for international global competition to be conducted on a uniform, level playing field.

Senator MILLER. Thank you. Let me ask one more question. As you know, a recent GAO report criticizes the SEC's process of making accounting interpretations as lacking due process. Do you have any views on that?

Mr. PITT. I am familiar with the report. I understand where some of the criticism comes from. I have not, of course, had the opportunity to talk with the members of the staff or Commissioners Unger and Hunt about their views on this.

What I will say is that concerns of this nature are very troubling to me, whether they are accurate or not. I believe that the SEC, which demands fairness and full disclosure from public companies, has to achieve the same standards when it articulates rules or interpretations and the like.

And if somebody responsibly criticizes the agency, while I may not agree with the criticism ultimately, what I do think is important is to allay any concerns, particularly for this Committee, that there is any validity to it or that the SEC is impervious to criticism. It has to be a responsive entity.

Senator MILLER. Thank you very much. Thank you again for being willing to serve.

Thank you, Mr. Chairman.

Chairman SARBANES. Thank you, Senator Miller.

Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Pitt, I have some concerns regarding the number of firms that are repeatedly fined or sanctioned for the same type of infractions at the SEC. I am also concerned that there is sometimes a significant time lag between when the infraction is committed and when punishment is ultimately meted out. What are some of the steps as Chairman, assuming you are confirmed, which I believe you will be, that you would take as the Chairman to stop firms from consistently violating the securities laws of the United States?

Mr. PITT. Senator Shelby, you raise actually two related concerns that are of great import to me. I happen to share both of those as important issues.

First, to my way of thinking, recidivism in the securities industry is unacceptable and should be subject to zero tolerance. I believe that the agency should speak clearly, and make its requirements known, help those who are subject to its requirements understand them and fulfill them. But if companies or firms or entities violate the law and violate it again, I believe that serious sanctions have to be taken to prevent recidivism.

On the question of the timeframe, that is a very serious concern of mine. The SEC has a highly regarded and vigorous enforcement program. But very often, the results are found 5 and 6 years after

the events in question. At that point, it is little more than an historical fact, although it does, of course, set standards for the future.

I believe that the SEC, has to promote an environment of real-time disclosure, and has to engage in real-time enforcement. Those are things that I would, if I were confirmed, try to promote.

Senator SHELBY. If the SEC does not step up to the plate there, a lot of this is meaningless, is not it, to some extent?

Mr. PITT. I think the SEC is in many senses the first and last line of defense for public investors.

Senator SHELBY. Absolutely. What are your views regarding the use of criminal prosecution in cases where firms consistently violate the securities laws?

Mr. PITT. Criminal prosecution has an important role to play in the enforcement of the securities laws. As I said earlier, the existence of recidivism is a question that bothers me enormously.

On the other hand, I do want to point out that there are some large organizations that have a thorough commitment to good supervision, but may have more than one bad apple. And I think that the Commission in those cases has an obligation to assist the industries it regulates to be able to deal with that problem without making them fearful that they will be criminally prosecuted.

So, I think it requires judgment.

But in my experience, I have worked with the U.S. attorneys, both on the Government side and the private side, and I believe very strongly that criminal enforcement is a part of the SEC's arsenal, an important part.

Senator SHELBY. Mr. Pitt, as you well know, for about 20 years, the SEC has advocated the repeal of PUHCA, the Public Utilities Holding Company Act. As Chairman, would you continue to advocate repeal of PUHCA?

Mr. PITT. I have some passing familiarity with that statute. When I was an attorney at the SEC, I litigated a couple of cases under the Public Utility Holding Company Act. And even then, I wondered why the Commission was administering it.

I believe that the Commission's position of endorsing those proposals is a sound one. Obviously, I would want to consult with my colleagues before I articulated a definitive position, but my instinct is to support that movement, as I believe the Commission consistently has.

Senator SHELBY. You are familiar with the fact that this Committee has reported out a bill to repeal PUHCA?

Mr. PITT. I am.

Senator SHELBY. What about in the future? What will be the SEC's role in view of Gramm–Leach–Bliley? We are getting into new terrain here. How will you work with that? You have multiple regulators now.

Mr. PITT. Well, Gramm–Leach–Bliley I think is a remarkable achievement by this Committee, which sponsored and wrote the legislation and then gave it the impetus to be enacted. It is the law and I believe it is a sound law.

I believe the Commission's responsibilities are two-fold. One is, to the extent that people are engaging in securities activities, to make sure that there is a level playing field, that everyone is subject to the same requirements. But because there are also issues

with respect to the banking industry and whether or not banks should be required to push out certain activities, I think the Commission is best served by a thoughtful and transparent process.

I know that there has been a lot of criticism leveled against the Commission's recent rules. There were reasons, I gather, as to why the Commission approached the issues the way it did. But I think that without transparency, without letting people comment on the rules, without giving them a chance to show why a rule may be misguided, no matter how good the rules are, they will not be accepted by those who are subject to them.

I believe the Commission has an obligation to work very, very closely with the banking regulators to make sure that it is on the same page as the banking regulators. But it also must make sure that whatever it thinks is appropriate in the way of securities regulation, ultimately prevails.

I think the Commission took a major step toward that yesterday when it extended the deadline on its interim final rules and it relieved banks of the obligation to start complying.

I might add one other thing, and I apologize for going on. I am very concerned whenever Government adopts rules that require private businesses to restructure the way they do business.

I would not say that there aren't circumstances where that may be needed in the public interest. But I think the Government should be very circumspect about telling business people how they should run their business. And so, that is a concern in that area as well as in others.

Senator SHELBY. Thank you.

Thank you, Mr. Chairman.

Chairman SARBANES. Thank you very much.

Senator Corzine.

Senator CORZINE. Thank you, Mr. Chairman.

I was very pleased to hear that you think reviewing the requirements that the SEC administers and regulations it imposes need a thorough review, whether it is broadly or I have specific interest with regard to a lot of the——

Chairman SARBANES. Jon, I think it would help if you pulled the microphone closer to you.

Senator CORZINE. The capital rules in particular and whether your intention is or view is that we need to move to more risk-based focused rules. I would love to hear your comments on that, or initial thoughts.

The second area I would love to hear some comment on is the investor protection issues that are rising with regard to analyst recommendations, which is one of the more serious concerns that I think is undermining the fairness of security markets now, whether the steps on a voluntary basis are sufficient.

Then I have an ongoing concern which we spoke about privately, that I think one of the great challenges of the SEC is its activities in periods of crisis management, whether you have the adequate forums for discussion with your counterparts in the regulatory and supervision areas, not only domestically, but also internationally, whether you feel those are right, the skill sets there within the SEC, and do you have the legal flexibility to address some of these

1987 kinds of crises or international issues that from time to time seemingly arise.

It is a broad list, but I would love to hear your comments and initial thoughts on these and to hear comments over time.

Mr. PITT. I will do my best, Senator. I think with respect to the broad-based review of rules, the way in which capital is raised is a very critical issue. The SEC has recognized that need, but it has yet to succeed in coming up with an approach to reform the capital-raising mechanism.

It proposed rules that were known as the aircraft carrier release, euphemistically, in part because it carried quite a heavy load. And those were fairly roundly criticized and the SEC, in the face of that criticism, withdrew its proposals. But it does seem to me that it is very important for our markets to be able to function on a real-time basis and to permit capital to be raised more effectively.

With respect to broker-dealer capital, I think that the entire area of net capital and the requirements we impose on brokers leave me concerned that we may not have today a modern correlation between what the requirements are and what the risks faced are.

Firms can come into business for $25,000 and so on. And there is not as much correlation between what the firms do and what the net capital requirements are.

Although this is not perhaps a sexy or exciting area, it is a critical area. I think that investors have to believe in the integrity of their brokers. And so, I think looking at risk-based capital requirements is something to which the Commission should give very serious consideration. My hope would be, even though I know you have other matters on your plate, that we could tap into your expertise, as well as work with the Committee.

With respect to crisis management, I come back again to something that is of great concern to me. I think that the time to deal with a crisis is not when it occurs, but before it has happened, when you can plan for it.

One of the things that I believe is critical is for the SEC, working with this Committee and its House counterpart, working with the Federal Reserve Board and with the Administration closely, is to be a part of a team that has a ready plan to deal with various crises that can arise.

My big concern is that we not have to think on the fly, but be in a position to assure people that if something untoward were to happen, we have a clear path to dealing with it, and that we have also dealt internationally with the ramifications overseas from the ripple effects of our own market problems.

Senator CORZINE. Do you have some comments on the analyst issue?

Mr. PITT. Oh, I am sorry. On the analyst issue, I think that there has clearly been an issue of perception at a minimum that has been raised. One person's perception is that person's reality. I believe the industry, the self-regulatory bodies, and the SEC have a firm obligation to look at the issue and to make sure that if there are conflicts of interest, that they are either eliminated or they are disclosed.

In many cases in the securities field, disclosure has often been thought to be a substitute, although in the analyst area, some of

the criticism has been that the disclosure has become boilerplate and therefore, hasn't been meaningful.

The SIA has put best practices and it is a very good initiative. The concern I have is that the SIA's efforts would have been better received if they had had the imprimatur of the SEC and perhaps the imprimatur even of this Committee, at least indicating that issues were thought through.

One of the main concerns I have is that the SEC may not be seen as an hospitable place for people to come and to talk about their problems.

One of the things, if I am confirmed, I hope I could accomplish, would be to take issues like the analyst issues and encourage the SIA along with the NASD, the New York Stock Exchange, and others, to work cooperatively with the Commission and to trust that the Commission is not going to seek to take over the process, but will try to facilitate the process in a way that assures that investors are well protected.

Senator CORZINE. Thank you.

Chairman SARBANES. Did you want to follow up?

Senator CORZINE. This whole area could explode into hours of conversation. I think this is a great response to the initial areas.

Chairman SARBANES. Senator Bennett.

COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you very much, Mr. Chairman.

Mr. Pitt, I will try not to prolong this too long. As the father of six children, watching some of the fidgeting of your own, I understand that this is not the most engrossing thing for them and I will try to bring this to a close as quickly as I can.

Chairman SARBANES. Gosh, I thought Robert and Sally were doing a pretty good job.

Senator BENNETT. They are doing wonderfully well.

Chairman SARBANES. Yes.

Senator BENNETT. But we ought not to prolong it.

Like Senator Corzine, I am delighted with your comment about the need to change what you call the securities equivalent of the Internal Revenue Code, which is a definition for something that is impenetrable and Soviet-style, subject to interpretation in whatever way the particular reader wants to interpret it at that time.

I wonder if you are suggesting that we have a Gramm–Leach–Bliley effort on security law, as you refer to the fact that they are 70 years old. Maybe it is time for us to try to rationalize those, as Gramm–Leach–Bliley tried to rationalize the banking laws. If you have any suggestions for us, I for one would be glad to hear those. Are you thinking in terms of recommending substantial legislative changes in the securities laws to catch up with the 70-year gap?

Mr. PITT. Senator Bennett, I don't know at this point what the product would be from that effort.

What I do believe is that there is a need for review. The impenetrability of rules and even in some cases, statutes, is something that we should not allow to exist.

The SEC has done a wonderful job of promoting plain English disclosure. It would be very nice if the statutes and rules the SEC administers were also written in plain English, but they are not al-

ways written in plain English. And that is not a criticism. It is just a statement of fact.

I don't know whether it is necessary to pursue legislation. To my way of thinking, the SEC ought to read a review that makes it clear what policy issues there are, that identifies whether the SEC has the authority, and this Committee sponsored the National Markets Improvement Act in 1996 that gives the SEC very broad-based power, and then decide whether the judgments are of a sufficient policy nature that they need to be ratified by the Congress.

The SEC exists to fulfill the Congresses' intention, not to create the Congresses' intent, if you will.

But whether legislation ensues, the effort will produce very good ideas for how to make this area of the law more manageable and, to some extent, reduce some of the burdens that we impose, provided that we don't eliminate any of the investor protections that are so critical.

Senator BENNETT. Thank you.

The story is told about Admiral Rickover. The reason that he rose to the very top of his profession and held that pinnacle position for so long against the opposition of most of the power in the Navy is that very early on, he agreed to keep the minutes of the various meetings that he attended.

So every time when they would go back to what they had decided in the last meeting, Rickover would read the minutes and somehow, the decision was always clear that Rickover was right and the other folks had not understood or remembered accurately.

I tell you that because the equivalent of keeping the minutes comes out of the accounting profession. And when the accountants give you a number, it is regarded as absolutely sacrosanct and that number proves something. My own experience shows that there are accountants and there are accountants and there are numbers and there are numbers. And very often, the justification for number A is pretty shaky and it represents the bias of that particular accountant. But once it is written down on paper and in numerical form, it seems to be beyond all challenge.

We have had in this Committee tremendous controversy about accounting procedures. And much of that in the past has spilled over on the SEC and the SEC's accountant.

We have spent an enormous amount of time talking to FASB about accounting standards. We have had almost knock-down, drag-out fights over the issue of accounting for a merger by the pooling or purchase method with accountants sounding like Medieval philosophers, justifying their view of one approach as opposed to the other.

You have the authority to pick the new chief accountant for the SEC. I understand the current one has resigned or taken employment someplace else. You are going to play a very pivotal role here in choosing the person who keeps the minutes. That is, in terms of the numbers. Do you have any bias one way or the other about which school of accounting you feel good about or what you would look for in a chief accountant?

Mainly, I am giving you the statement more as an urging than a real question. But if you have any comment you want to respond to, I will be happy to hear you.

Mr. PITT. Let me say that I have heard reports that the current chief accountant may have accepted a position elsewhere. But I have not had a chance, obviously, to talk to him about that, and I don't know for sure whether he is planning on leaving or not.

What I do believe is that the right form of accounting is one that gets it appropriate the first time, not the second or the third time. And one of the things that I am concerned about is that there is too much after-the-fact disagreement between corporate America, accountants, the SEC, and others.

It strikes me that there ought to be a better way to help companies and accountants find the right accounting principles before financial statements are prepared, to help companies that have difficult accounting issues resolve them, so that investors are not burdened with accounting statements that then have to be restated if there is disagreement.

I believe FASB, which is a private-sector standard-setting body, is the right model for the setting of these rules, provided that there is transparency and the FASB does use transparency. And I believe that the SEC's role is to make sure that investors are protected in that effort. But I think it would be even more remarkable if the SEC can assist before the accounting statements are prepared in making sure that people understand what the requirements are, particularly in the high-tech area.

Many of the restatements we have seen come about because people are confused about what the standards mean. I think it would be helpful to have a collaborative effort to try and make sure that we can avoid some of those confusions, some of those concerns.

But I am definitely in favor of an accounting system that gets it right, not that uses Medieval philosophy, as you put it, Senator.

Senator BENNETT. Thank you very much.

Thank you, Mr. Chairman.

Chairman SARBANES. Senator Dodd.

Senator DODD. Thank you very much, Mr. Chairman.

Many of these questions have been asked already by others, Mr. Pitt. Let me just pick up on the last line of questioning from my friend and colleague from Utah, and in a sense also from Senator Corzine from New Jersey, who brings a wonderful, unique expertise to his role here on the Banking Committee, and that goes to the statement that I made at the outset about transparency and competence.

I think the SEC and FASB have done a pretty good job already in their responsiveness to this Committee and others on the accounting standards issue, and the importance of maintaining a very independent FASB.

Certainly, we all want to get rid of Medieval standards that don't apply any longer. But your job is not to become the most popular guy in town. It is to be the guy that will actually look at us and tell us, when we may be calling on behalf of constituent interests, no matter how popular it may be, that you have an obligation to do what is really right on behalf of investors in this country, the consuming public that depends upon the integrity of these markets.

You are going to hear a lot of talk about various ways to do things. I think you ought to listen carefully and you have indicated you will do that. But at the end of the day, you have to decide, the

Commission does, what is really in the best interest of maintaining those basic pillars and standards that have, I think, sustained this country and its markets and their integrity for so long.

Senator Corzine raised the issue with you of the analyst issue. It is a serious, serious problem. You have a *Wall Street Journal* analysis that says that in the last quarter of 1999 and most of 2000, less the 1 percent of the 28,000 recommendations from stock analysts called for investors to sell. Less than 1 percent of them called for them to sell.

Now, I am all for a bull market. I think it is a wonderful thing. But that is ridiculous. Something's going on there that is troublesome, in my view. And I don't expect you to tell me what the answer is today, but this is a serious problem that needs some very aggressive attention, in my view. I know the Securities Industry Association, you mentioned them already, and NASD, and others, have addressed the subject to varying degrees. This really needs to be brought together here in a way that can give people a much stronger sense of confidence.

There is just something blatantly wrong here. There is a real cloud here on the horizon, in my view. We are going to be counting on you to lead us on this. We can all have our views up here, but it really is you and the Commission that have to be the lead on matters like that.

So if you want to respond to this a little further, I would be happy to hear you on it, it is important.

Now let me ask you, basically, do you agree with me that FASB ought to be independent? Would you want to see Congress legislate accounting standards?

Mr. PITT. No.

[Laughter.]

I don't believe that Congress should legislate accounting standards. I believe that having the private sector with an independent entity do it is the best way to do it.

Let me say this, Senator. You are correct. If I am fortunate enough to be confirmed, I am not running for office and I am not expecting to be popular. In fact, I think by taking the oath here, everything after that has subjected me to the potential that I may walk out the least popular person in the world. I am willing to take that risk if I believe that what we do is right.

What concerns me is that when the SEC takes action, I would like people to understand what it did. I would like it to be set forth plainly. I would like people to hear the explanation and understand it. So that, even when there is disagreement, people have confidence in why the SEC acted the way it did.

This is a wonderful agency and as I pointed out earlier, I started my career there. I have enormous affection and admiration for the SEC. It would be a high honor for me if I am confirmed by this Committee. But I think that the SEC can do a lot to promote confidence both in the way the industry regulates itself and the way disclosure is made on a real-time basis and the like.

I would say one other thing, Senator.

Although there is some criticism about the statutes being almost 70 years old, there was one concept that was built into the statutes that is incredibly valuable, that is the concept of self-regulation.

It is a wonderful concept because, among other things, it reduces the burden on Government. And second, it allows the industry that is most knowledgeable to have the first crack at setting standards. And beyond that, all that legislation can really do is to find what is fraudulent or what is legal or what is not legal. Self-regulation can allow the creation of ethical rules. And I believe the securities industry has done a wonderful job of looking after the ethics of its members.

The analyst situation is now at a sufficient hue and cry that I think everyone has to work together to change the popular perception. But I could not tell you today sitting here that I believe there is a need for legislation or anything of that sort. I just think we need a collaborative effort.

Senator DODD. Let me pick up quickly on a related matter, then one other quick question, if I could, Mr. Chairman.

I see my colleague from New York has returned here as well, so I won't take up much time.

I was teasing bringing up Regulation FD. And I presume most of the people gathered in this room and certainly you know what I am talking about with the regulation on fair disclosure, which has attracted a lot of attention.

I had an article in my hand a few minutes ago on the various heated debate growing around this issue. It certainly is related.

And just for purposes of discussion, as everyone should know anyway, that the SEC passed this rule, which attempted to provide a fair distribution of financial information by preventing companies from giving material information to securities analysts unless they shared it simultaneously with the public.

This rule has its strong proponents and its strong opponents for a variety of reasons. Critics have charged that it is reduced the quality of the information reaching the marketplace, while proponents of the rule contend that it is made the marketplace fairer to the greater number of participants.

In light of your comments about the problem I see with less than 1 percent of 28,000 recommendations from analysts to sell, what comments do you have on Regulation FD?

Mr. PITT. I am familiar with some of the criticism of Regulation FD because I know that you are aware that when the rule was proposed, I expressed criticism on behalf of clients I represented.

I think the underlying concept of Regulation FD is unassailable, which is that no one should have an unfair advantage in the marketplace. That has to be right.

The SEC has made an effort to try and deal with that very issue. Were I in a position to have had something to do with it when they adopted the rule, I might have suggested changes or a different approach.

We now have a rule, and the SEC has undertaken a review of the effects.

I am concerned when a broad array of groups, the Securities Industry Association, the National Investor Relations Institute, and others have raised concerns, in some cases, very serious concerns, in other cases, what I guess I would call tweaking concerns.

I think the SEC has an obligation to listen, to have a dialogue, to understand the criticisms, to do a review as it is doing now, and

then to explain what its conclusions are and what its findings are and why it thinks either some changes are appropriate or that no changes are appropriate.

That is something that I believe requires a clear look and that is something I would look forward to doing. But I have no preconceived intention with respect to that rule whatsoever.

Senator DODD. I appreciate that. Again, I won't use all deliberate speed, but, obviously, to the extent that we can move fairly quickly to get clarity on this I think helps tremendously as well. So, I would hope that you would undertake that fairly quickly.

And last, I worked on the Securities Litigation Reform bill, and I talked about this the other day in the office. It was a fairly controversial piece of legislation at the time and there were uniform standards after that. As someone who is in the practice of law and has had to grapple with this a little bit, I cannot help but asking you the question of how that law is working.

None of us know with any certainty whether or not the laws we pass up here are going to achieve the desired results, and I would be interested in your point of view as an attorney practicing in the area of securities litigation, whether or not that law is working fairly effectively.

Mr. PITT. Senator, as I mentioned to you when we met, I testified in support of the legislation.

As I look at the Federal securities laws, I find the PSLRA—the Private Securities Litigation Reform Act—that you authored is a rare and unique piece of legislation in the securities field. There have been virtually no cries for amendment of the legislation. There have been no outcries that it is working major unfairness.

People have raised issues and expressed some concerns with it. But my sense is that this was an appropriately conceived piece of legislation and then it was adopted with a very careful balancing to protect the rights of investors when legitimate issues arise, but to cut out frivolous lawsuits which really harm, after all is said and done, other investors. Frivolous lawsuits only take more money away from those investors who have chosen to invest in a particular company.

My sense is that it is a sound piece of legislation that is working well. And, I am not just saying that because you were the author.

Senator DODD. That is okay.

[Laughter.]

Mr. PITT. Well, I know that. But I am saying that I think it is a very strong piece of legislation and is making an important contribution to the securities laws.

Senator DODD. I thank you for that.

Mr. Chairman, I went over my time and I apologize. Thank you.

Chairman SARBANES. Senator Schumer.

Senator SCHUMER. Thank you, Mr. Chairman.

Thank you again, Mr. Pitt, for your good work.

I have a lot of questions. I would ask consent to submit some of them in writing. I see your son's view of this hearing is, at least to some, a reality. So, I will try to be quick.

[Laughter.]

First, globalization. I think we have built up almost an exquisite balance between regulation and competition or regulation and free-

dom here in this country. And you are right. The SEC has been remarkably successful, of all the Government regulatory agencies. Yes, I hear my constituents in New York complaining about the specific instances. But I think if you asked each one of them, has it led to us having the strongest, deepest, and most transparent security markets in the world, they would say yes.

My worry is that all that could become unraveled with globalization, that with the new technology, it is just as easy to buy a stock in London or eventually, who knows, the Cayman Islands, and they will offer an opportunity to buy it a little more cheaply and a little quicker with no regulation at all. And while, in the long run, we know that usually fails, regulation is the strength of our markets, in the short run, it is very alluring and most people, particularly the larger investors, feel, hey, I can get away with it because I am so smart.

What is your view of globalization and this run to a least-common-denominator and its effect on the securities markets and securities regulation here in this country?

Mr. PITT. I think you are absolutely right. Globalization is not an issue about which the United States has a choice. We are confronted with it. It is a reality. And what we need to be certain of is that U.S. companies and U.S. markets can compete effectively and efficiently in a globalized marketplace.

One of the problems that we have, I think, is that because our system is so sophisticated and because it has been around for so much longer, there is a tendency to think that anything other than our system is inadequate. Sometimes that is true. But other times it is not.

I believe that the SEC has to develop a posture in the international community as a leader to promote our standards, but also as one that respects the integrity of other nations and the integrity of conflicting ideas and tries to find an approach that will enable us to give all investors maximum protection and yet not descend to the least common denominator.

Senator SCHUMER. And do you think that is do-able?

Mr. PITT. I hope it is do-able.

Senator SCHUMER. My nightmare is that 15 years from now, we find, despite our efforts, that things have unraveled a great deal.

Mr. PITT. I believe that is a risk. I don't know whether it is do-able. I know that we have to hope it is do-able.

I think the other thing that we have to do is to devise strategies, first, to make it successful. Negotiation requires you to listen to the other person, not just to talk to the other person.

Senator SCHUMER. Right.

Mr. PITT. We have to listen. In addition, I think we have to have a strategy in the event that negotiation fails.

Senator SCHUMER. Right.

Mr. PITT. I think if we prepare for both, we can be successful.

Senator SCHUMER. Do you envision possibly the sort of thing like the Basel—you know, capital requirements for the banks were, I guess, the first place where this hit and there was eventually, I think it took 20 years or something, the Basel Accords. Could there be something like that in the securities markets?

Mr. PITT. My hope is that there could be something like that. I think we need to try for it. And I think that the SEC appropriately plays a leadership role in that effort.

We understand sophisticated markets. But I think we also have to be able to understand other cultures and make sure that when we insist on something, we have taken into account the views of other countries and we have tried to accommodate their legitimate concerns without sacrificing investor protection.

Senator SCHUMER. A related question is the conflict between the deep liquidity of the markets and the so-called natural monopoly that one market has, and with the new technology, the fragmentation of markets. And when there is fragmentation, at least without some kind of sharing of information for the average investor, that the average investor gets rooked because they don't see the alternatives. What are your views on that basic tension that I think has increased in our markets?

Mr. PITT. Well, unfortunately, you are absolutely right. There is a very real tension between them.

The fragmentation in our markets is really a pernicious development because it threatens the confidence of individual investors. Moreover, it places potential risks on the brokerage community, which may not have the tools and the ability to find the best transactions and the best prices.

The tension that exists is that, in this high-tech era, there are people who are quite creative and innovative and we do not want to stifle innovation and creativity. Nor should we want to stifle competition.

The trick here, and I wish I could give a simple prescription, but I don't have it just yet, is to encourage innovation and competition and yet, provide sufficient transparency so that people have confidence in the way the markets operate. I know the Commission has spent a lot of time on that and it has pursued these issues with certain new disclosure requirements. And once those are assessed, we will have a better idea. But I think we cannot be discouraged. We have to find the solution to this problem.

Senator SCHUMER. The big-screen type idea seems to be the sort of place you are headed in, provided it is technologically feasible.

Mr. PITT. It is a possible solution. I think one of the concerns is that before the Commission seizes upon any solution, I think it has to hear all of the interest groups involved and make sure that it has not inadvertently killed some form of competition or deprived some people of their livelihood.

Senator SCHUMER. Next, decimalization. I am hearing complaints from my constituents in New York in the brokerage business that decimalization, contrary to what people thought, has increased illiquidity in the market and that it is not working as well as people had thought. I know, as it was being tried, that the SEC was somewhat reluctant to go forward, but they did. What is your view as to how decimalization is working and the problems that it might be creating?

Mr. PITT. In the first instance, decimalization puts U.S. markets on a comparable basis with world markets. That is clearly a plus.

Second, in some instances, decimalization has had the salutary effect of reducing spreads because, previous to the decimalization,

the lowest spread was one-sixteenth, and that was about 6¼ cents. Now, you can go down to a penny, and there is debate about sub-penny decimalization.

I think there are concerns about fragmentation. There are concerns about certain professionals stepping in front of orders. And liquidity, because the pricing can change so quickly, that you have people who are concerned about staking out large positions—that is, offering certain prices for larger positions and narrowing the positions at which they will offer any particular price.

I think these are complicated issues. The Commission yesterday put out a concept release on this, if I am not mistaken. But there are issues that need to be assessed and the only way to deal with this is to have the Commission lead a fact-finding review of what the impact is, what the concerns are with it, and whether there are ways to solve the problems.

The concerns that I have heard are legitimate. The question is, how does one deal with the enormous advantages of decimalization without inflicting some of the enormous disadvantages? And that, I think, the Commission has to take a look at.

Senator SCHUMER. But it would be your intent if you became Chairman to commence with this fact-finding review?

Mr. PITT. The answer is yes, although I think the Commission has already commenced on it. But the answer is yes, and also to start a dialogue on these issues with people believing that the SEC is receptive to their points of view. It may not adopt them, but it wants to hear different points of view so that whatever it comes up with is the very best it can do.

Senator SCHUMER. One final question. I thank the Chairman for his indulgence.

The legislation that Senator Gramm and I sponsored with the support of most Members of this Committee on 31(e) fees and their elimination, do you have a view on that?

The reduction. I am sorry.

Mr. PITT. I believe that the fee reduction legislation is a very sound principle. I believe that it has been tied to pay parity, which is of vital concern to the SEC and something I hope can be passed this session of Congress, because the SEC is suffering huge attrition and turn-over. Combined, it is a sensible legislative package.

Senator SCHUMER. Thank you, Mr. Chairman.

Mr. Pitt, I look forward to your Chairmanship.

Mr. PITT. Thank you.

Chairman SARBANES. Thank you very much, Senator Schumer.

I have a number of questions I want to ask before we draw to a close. One just follows along a little bit with the question that Senator Schumer asked.

The Wall Street Journal about a week ago, in an article—Enforcement Chief At SEC Plans To Move To Private Sector—reports that the retiring Enforcement Division Director, Rick Walker, recently confirmed that the agency has nearly 260 financial fraud investigations underway, mostly complicated cases handled by teams of attorneys and accountants.

He said those cases alone could consume the enforcement staff for the next 5 to 10 years. That would not include any new cases

that would arise. And the article then went on to conclude, "the agency must deal with new pressures on limited resources."

Now, I am one of those who thinks that the agency does not have adequate resources to fully discharge its responsibilities. I think it has very important responsibilities. I think we need to ensure that it has the resources. So one of the issues that we discussed when we dealt with this fee question was whether there would be enough room left—there is enough room to do its current budget, but its current budget may be inadequate. And whether there is enough room left to do an adequate budget.

Now the fees are way up above at a higher level. The Congress is obviously programmed to bring those down. What is your view of the adequacy of the resources that are available to the SEC in order to do its job?

Mr. PITT. Senator, it is very difficult for me to give you a definitive response to that because I have not had a chance to sit and talk with the people who have been responsible for making these decisions.

What I will say is, in part, I am concerned that there will never be enough personnel for the SEC to do everything it wants to do. That is why I believe as an agency, it has to prioritize. I believe you need to know what the SEC's priorities are and you need to make sure that the SEC is acting in the best interests of investors and of capital markets.

But I also believe that the SEC is a part of the Government. And one of the concerns I have is that before we engage in a broad expansion of the SEC's staff, we make sure that the SEC is utilizing the resources it already has as effectively and efficiently as it can.

It may well be that there is a need for additional enforcement personnel. I could not answer that now. And the only thing I can assure you of is that if I thought that the SEC were understaffed, I would certainly tell you what I believed and I would tell you what I think would solve the problem.

I am concerned, however, that the SEC focus not just on real-time disclosure, but real-time enforcement.

I have great respect for Mr. Walker. Going back to Irv Pollack and Stanley Sporkin, the leaders of the SEC Enforcement Division have been exceptional public servants. But my concern is that 5 to 10 years to bring cases now in hand is far too long. Even if we had more people, 5 to 10 years is too long. Bringing cases long after companies have been declaring bankruptcy and investors have lost millions of dollars really doesn't help anyone.

The SEC has an obligation to figure out how to come up with real-time enforcement. If we do that, and we think we also need more personnel, then we should come back to you and tell you, we have now made efficient use of the personnel we have and here is what we think we now need and these are the reasons why. And that, of course, I would pledge to do to you promptly and honestly.

But I don't start out by seeking a broad expansion or a broad contraction. I think we have to figure out what we have, what our priorities are, and then see what we need.

Chairman SARBANES. But if you make a determination as to a need, I take it you won't be hesitant about expressing that and fighting to get the resources with which to meet it.

Mr. PITT. I will not be hesitant about expressing my views. But I do want to tell you that something that I believe firmly is that the SEC is not a Government unto itself. I believe it is part of the Government.

One of the things that I believe the SEC has an obligation to do is to check with OMB, to check with the Congressional Budget Office as well, and make certain that even though it may think it has a compelling need for people, which it can state honestly, it also has to fit within an overall budget presentation.

People may choose different priorities. What I believe is not in fighting, but trying to come up with the best position and then trying to persuade people that giving the SEC more people, if that is appropriate, is the right result.

I would not hesitate to express to the Administration or to the Congress my legitimate views. But I believe that the SEC has to adhere to Government as a whole, not Government by individual agency. That is the only caveat I would express.

Chairman SARBANES. Let me pursue that caveat for a minute. I understand it and I think up to a point, it is appropriate. But the SEC is an independent regulatory agency established by Congress.

Now if you are within an Executive Department and the OMB tells you, this is your budget and this is the Administration's position, then that is your budget and that is your position. When you interact with the Congress, that is your budget and that is your position. Unless you bootleg the information in one way or another to the Congress, that is that. I don't see the independent regulatory agencies in the same posture.

In a sense, you have an obligation being within the Executive Branch. I also think you have an obligation to give Congress your best evaluation and judgment of your budgetary situation, even if that evaluation differs with the OMB determination. What is your view on that?

Mr. PITT. I don't think that you and I have any difference of view, Senator. I believe that the SEC is an independent agency and its independence is important. But I have a very strong view that independence does not mean an unwillingness to listen to other points of view, to take into account every consideration possible. I think independence means that after everything has been taken into account, what you want to do is make your own decision, not a decision that is necessarily forced on you.

I also want to assure you that I would never encourage, although I know it goes on, bootlegging of information. What I prefer to do is give you the information openly, and if we had a disagreement and we could not persuade the Office of Management and Budget, we might present the budget in one way and if we are asked what our views are on it, we will tell you honestly and we would make sure that OMB knew that.

I just believe our starting point should be that we are part of one Government and, as a result of that, we need to pay very careful attention to what other parts of the Government think.

But I have no question that the SEC is an independent agency.

Chairman SARBANES. I yield to Senator Schumer and then I will resume.

Senator SCHUMER. I have one final question.

Chairman Levitt had been in for 8 years. I believe it is a full 8 years. Right?

Mr. PITT. For 7½ years.

Senator SCHUMER. For 7½ years, and he did a lot of things. He gets good marks from me and from many others.

Is there any significant decision that he or the SEC made over those 7½ years that you disagree with and would work to change?

I could not ask you all nice questions.

[Laughter.]

Mr. PITT. There is an informal group known as the Chairman's Protective Association.

[Laughter.]

It would ill-behoove me to say anything negative about my predecessor, particularly since I consider him to be a friend and I think he was a very committed public servant and I know that he has support from this Committee on both sides of the aisle.

Senator SCHUMER. I am not asking you to say anything negative about him. I think he has been an excellent Chairman. I am simply asking, do you have policy disagreements with any of the major decisions, which were many and broad, that the SEC made during his tenure?

Chairman SARBANES. I might point out that this Chairman's Protective Association to which you made reference seems to operate not only looking backward, but also looking forward because Chairman Levitt is saying very nice things about you.

I just want to get that on the record.

Senator SCHUMER. Mr. Chairman, I would note one more thing. Chairman Levitt is also from Brooklyn.

[Laughter.]

So it may be the Brooklyn Protective Association.

[Laughter.]

Chairman SARBANES. That certainly complicates the situation.

[Laughter.]

Senator SCHUMER. Seriously, would you answer that question?

Mr. PITT. There are decisions that the SEC made which I have viewed from the outside and which I have viewed from the prism of a private lawyer understanding the legitimate concerns of many clients.

And so, there are decisions that were made that I would not have made. But that notion is based on incomplete information. Unless you have the ability to talk to the people who made the decisions, to understand why they did what they did, it is pointless for me to criticize them. That was okay for a private practitioner. It is not okay for a public servant to criticize any decision that has been made, unless he or she has taken the trouble to inform himself completely.

So, yes, there are a number of decisions that were made during the 7½ years, not necessarily an enormous number, but a number of decisions with which I would have disagreed, but based on incomplete information and not having the ability now to sit down and talk to the staff, the Commissioners who remain, and Chairman Levitt, as a matter of fact.

I do know this. That every change he promoted was designed to be protective of the public interest, and to my way of thinking, the

one thing that I wouldn't dream of changing is a commitment to the Commission's obligations to the public, public investors, and capital markets.

And Chairman Sarbanes, I would just say one thing. It does go forward in terms of the Chairman's Protective Association.

One of the things I realize is that if I am fortunate enough to be confirmed and if the President then appoints me as Chairman, I will have a successor. I will not be the last Chairman of the SEC. It strikes me that I would like him or her to treat me as well as I would like to be treated. And so, I am treating Chairman Levitt that way as well.

He deserves it, but I am also self-protective.

[Laughter.]

Chairman SARBANES. Just to flesh out Senator Schumer's question, I take it that, while you might not have made a particular decision the same way, looking from the outside, and you have said if you were inside and had more information, you might have seen it differently.

Once the decision has been made that is in place, is not the burden—I mean, you are not moving in there with the notion of overturning these things because it seems to me, at that point, the burden of changing it is much heavier than the burden of putting it in place to begin with.

Mr. PITT. I am not coming in with a notion of overturning decisions that were made. I am, however, coming in with, first, a view to review all of the Commission's regulatory requirements to make sure that they continue to make sense.

Second, to continue the efforts that the Commission has already begun to determine the effectiveness and the impact of some of these rules, some of which I had concerns about, to see if they are working as intended.

I believe that I have an obligation which remains constant, which is not to act first and then think. My view is, I would like to think first, hear what other people have to say, understand the criticisms, and then make a decision.

But I can assure you this—if I think that there are rules or regulations on the book that are inappropriate, first, I would want to be able to persuade my fellow Commissioners because the Chairman has only one vote. And if the Commission as a whole thought that were advisable, on major things, we would want to make sure that this Committee was fully informed of what our intention is.

I have no problem in complete transparency for the SEC. I want you to be comfortable if I am confirmed that you will always get my honest answer, and you are not going to be surprised. You are going to know what our views are and have the ability to talk us out of it or persuade us otherwise.

Senator SCHUMER. Mr. Chairman, could I just follow up?

Again, I think your answer is an extremely reasonable one. I am not asking you to compare the representations you made as a private citizen and attorney. But I am trying to get a feel for where you want to take the agency under, as I have said, extremely able leadership.

Are any of those decisions in the last 8 years, any that particularly stand out in your mind that you think do need that kind of

thorough review and that you might, in the first, say, 6 months of your tenure, when you are confirmed as Chairman—and I say when, and I think I can ask you this question because I think it is a foregone conclusion that you will be confirmed—but that you might when you get in there say, we need a review on this?

Mr. PITT. Again, the answer to that is that, without talking to Commissioners Unger and Hunt, without talking to senior staff people, I would be doing a disservice to the notion of collegiality.

I think that I could tell you a number of initiatives that I might have done differently or with which I was concerned. But I also believe in the consistency of regulation. I believe agencies should not pull the rug out from under people every time there is a change in the composition of the agency.

So, I basically prefer to have a lot of guidance and input before I articulate anything.

Going in, there are no rules I would start out believing should be overturned, or no decisions that should be overturned. But there are also no rules or actions that would be off the table if people can persuade us that there are problems with them.

Senator SCHUMER. Thank you, Mr. Chairman. I appreciate your indulgence.

Chairman SARBANES. I have been contacted by a number of constituents who work at the SEC. About a year ago, SEC employees voted by really quite a substantial margin, well over 70 percent, to be represented by the National Treasury Employees Union.

Now these constituents voiced these concerns to me. First, they say that the union officials have not had an opportunity to meet with the Chairman. Second, there is negotiations underway on a contract, but they feel that on the SEC's side, they are not proceeding intensively enough to try to reach a contract.

They allege that there has been management harassment of employees who are union officials. And in fact, the NTEU has filed a number of unfair labor complaints against the SEC. So these are allegations.

Also, they say they have a number of suggestions for improving the workplace for the employees and they are having difficulty being heard on those proposals.

If confirmed, and then serving as the Chairman, it seems obvious to me, but would you be willing to meet with the elected officials of the union who now represent your employees? Would you push your staff to negotiate—I mean, the management side on this negotiation—to intensify their negotiations with respect to arriving at a contract? Would you take a look at the allegations of unfair labor practices, and also consider the union's suggestions to improve the work environment?

I was quite concerned by these reports because they all seem to me to be counter to what one would regard as appropriate standard practice.

Mr. PITT. Senator, let me start by saying that it has been almost a quarter of a century since I worked at the SEC. And the one thing I can say is this is not my father's SEC. This is not the SEC that I knew.

I am aware that a union was voted in and is a determination that has to be respected as a matter of law. I don't have any idea

where the contract negotiations are. As a general principle, if people want to meet with me and it is constructive to do so, I have no problem meeting with people, providing it is appropriate.

One concern I have is there may be times when a meeting could undercut an effective process by nullifying the ability of people who have the obligation to come up with some product from doing that.

But I have no problem meeting with anyone.

If there are unfair labor practices that are ongoing, one of my concerns is that an agency that enforces the law has to obey the law. So, I believe that there should be zero tolerance for any law violations by the SEC. I just don't know that those allegations are appropriate or accurate.

Finally, I guess on improving the workplace, I would say that is something I am totally committed to and I would welcome any suggestions anyone has on making the SEC what I believe it always has been—the most exciting Government agency and a place that attracts the highest caliber of professional employees.

Chairman SARBANES. I take it that it is a matter that you are prepared to turn your attention to. I just received these reports very recently and I was concerned to hear them.

Mr. PITT. Well, I am concerned any time there is criticism of the agency and there is something, if I am confirmed, that I would turn my attention to and figure out what the most appropriate approach is. From time to time, if you want to understand what I am learning and so on, I would be very happy to share it with you and the Committee.

Chairman SARBANES. In testimony before the Senate Foreign Relations Committee, Nina Shay, a very distinguished Commissioner on the U.S. Commission on International Religious Freedom, raised a question about SEC requirements for companies in terms of their disclosure that are engaged in economic activity in nations that have been sanctioned by the United States. And the leading example of this is the Sudan. We have economic sanctions in place against Sudan. Those are administered by the Office of Foreign Asset Control at the Treasury.

So there is an immediate preclusion as far as U.S. companies are concerned. However, foreign companies are able to operate in the Sudan and also operating in the U.S. capital markets. Thus, Americans may well be unknowingly investing in companies that are operating in foreign countries such as the Sudan that are being sanctioned for some really absolutely atrocious practices. The disclosure requirement would give more information to potential investors about these companies.

Now the SEC, in a letter to Congressman Frank Wolf back in May, indicated that they would heighten disclosure requirements for foreign companies doing material business in or with countries that have been sanctioned in the way that I indicated. Do you have a view on this issue? We are particularly anxious to carry forward the response that the SEC has made to Congressman Wolf's inquiry. In fact, he has talked to me about this.

Mr. PITT. Let me start by saying, Senator Sarbanes, that the atrocities being committed in the Sudan are despicable and as a citizen, I denounce them.

As to the securities laws, however, I start from a slightly different premise—the SEC is really not the place to develop foreign policy, and the SEC should be a supporter of this country's foreign policy.

So, I believe that the SEC should consult with the State Department, that it should consult with the Treasury Department. It should consult with this Committee and understand what the concerns are and it should be a contributor to a national policy. If there are material items that should be disclosed, obviously, the SEC should require that.

The concern I have, and there have been suggestions that the SEC ought to preclude access to the U.S. capital markets and things of that nature, it seems to me that this is a place where the SEC should be part of a team. It should be listening to those with the responsibility for setting U.S. policy, and then it should take what actions are thought to be appropriate. If there are violations of the securities laws, they cannot be countenanced.

I just wonder about interpreting the securities laws in ways that would extend the reach of the SEC to a whole variety of issues.

And so, I think that before the SEC can take steps or actions, it has to carefully consider what the impact of its decisions are, not just with respect to the particular item, but with respect to similar questions that may come up.

Those are complicated issues and the one thing I would do is, and I realize that this is a topic of great importance and urgency and it is something I would devote immediate attention to if I am confirmed.

Chairman SARBANES. Well, let me just sharpen the issue for you a little bit.

First of all, amongst those with whom you would consult, I presume you would also include the U.S. Commission on International Religious Freedom, which is a Congressionally established Commission and given these responsibilities to examine the question of religious freedom around the world.

Now, the question I was putting involved disclosure with respect to companies doing business in a country that had been sanctioned under U.S. law.

So it is not putting the SEC in the lead or the initiating position. The premise of this question is that that has already happened by the Treasury placing the country on the OFAC-administered sanctions. And whether the SEC, then, should require, as part of the disclosure—it is not even access to the market. That is a step beyond. This question is whether there should be disclosure to the investors of the fact that this company is making investments in a country that has been sanctioned.

Mr. PITT. The key issue in answering your question is whether the information would be material to a reasonable investor.

My only hesitation is, before I believe that the SEC can take a definitive position on issues like that, I think it needs to be first informed about appropriate national policy. And I accept your amendment, by the way, in terms of other bodies to consult. I was not meaning to exclude anybody that has relevance to this. Then the second is to make certain that the SEC's participation is consistent with its application of the securities laws in other contexts.

If this information were deemed to be material, under our laws, it must be disclosed.

There are some who suggest that we may be changing the standards of materiality to lower the threshold because the end result may be a better one. That is to me not a step the SEC should take lightly. It is a step that the SEC should understand.

Before it opines on that, it should make sure that it understands that information is material within the traditional meaning of that term, unless, for some reason, there is a desire to have the SEC take a different position with respect to an issue, and that I think is a policy judgment that would require Congressional directive.

Chairman SARBANES. Let me close with this observation.

We think that the response that was made in the letter back to Congressman Wolf by Acting Chair Laura Unger was responsive to this situation. So the SEC is, in fact, addressing that matter.

I will just leave it at that, although I guess I leave it wondering whether the Chairman's Protective Association extends to Acting Chairmen, as well as Chairman.

Mr. PITT. It absolutely does, especially when the Acting Chairman is a personal friend, as Acting Chair Unger is. So the answer is, it extends to her as well.

Chairman SARBANES. What management or process changes would you consider at the Commission? Do you have any in mind as you get ready to take over?

Mr. PITT. I do have some thoughts, although, again, I have not actually pursued them because I have not been confirmed.

I believe, as I have indicated, in transparency. I also believe that regular meetings at which the Commissioners can articulate their views to one another and debate back and forth with members of the staff are the best vehicle to produce sound policy and decisions.

The Commission has been short-handed, as you noted at the outset. And in some events, the Commission has acted by seriatim decisionmaking. While I don't have any views with respect to any of the decisions the Commission has made by that process, my own view is that the purpose of a collegial body is to have all of the Commissioners interacting face-to-face.

I would hope that the Commission would have a schedule of regular meetings. The way we did it a quarter of a century ago was to have meetings on Tuesdays, Wednesdays, and Thursdays, and have an open calendar on one of those days and a closed calendar on the others. To me, having Commissioners interact with one another is a very, very important part of the statutory framework that this Committee oversees.

Chairman SARBANES. In closing, I think it is extremely important that we try to have a full complement at the SEC. It is a five member Commission. Currently, three positions are vacant. The terms of the other two Commissioners who are serving have, in fact, expired. But under the law, there is a holdover period that is permitted, and they are now both serving in the holdover period.

Mr. PITT. That is right.

Chairman SARBANES. The SEC is much too important an institution to be left without a full complement of highly qualified Commissioners. I am responsive to your observation of trying to get the Commission to work as a collegial body. I think early in the hear-

ing you made the observation that each person has a vote down at the SEC. The Chairman has a vote, one vote, just like each Member of the Commission has one vote.

There is a tendency that has developed, I think, in Washington with respect to many of these Commissions or Boards to think that only the Chairmanship matters and to neglect the other Members of the Board or of the Commission, who often share equal, at least as far as voting is concerned, equal decisionmaking authority.

And that, I think, has resulted in a depreciation of what is expected from the Commission Members. People come in and they have a high standard, or one hopes that they have a high standard for the Chairman. Then they tend to let that tail off when it comes to Commission Members. And I think the SEC is of such importance that we need five very able, well-qualified members.

We have discussed this with the Administration and I think that they are sensitive to this problem. We are hopeful that they will send us candidates as well qualified as Harvey Pitt, or at least approximates—it is hard to be as well qualified as Harvey Pitt, as everyone has said here this morning, but at least moving up in that direction.

We have indicated that we are prepared to act promptly on nominees as they come before us. We intend to act on this nomination in the very near future and take it to the Senate floor and hope to have early action on it there as well, so we can get a confirmed Chairman into place.

Because of the alterations that were made in the term which you will be filling, you will be able to go into place with a quorum, without any question.

To allow an agency with the importance of the SEC to get to the point where there are questions being raised about a quorum is a serious development. Now, I am not laying that off on the new Administration. I realize that there are responsibilities that trace back a bit into our past.

But that is our intention with respect to the Commission. I think the biggest service this Committee can perform right now for investor protection and the strength of the markets is to get a fully functioning SEC Commission into place of highly able and competent people. That is our intention. We hope to accomplish that, working with the Administration. We are very pleased to have you before the Committee today. I don't think I am giving away any secrets if I wish you the very best in your future responsibilities.

Unless there is something you want to add, I want to close by again telling Robert and Sally, they were superb performers.

[Laughter.]

Mr. PITT. I would like to thank you personally, Mr. Chairman, for both your expedition in having this hearing and your very generous comments about me.

If I am confirmed, I would consider it an honor and a pleasure to be working with you and the rest of the Committee.

Chairman SARBANES. Good.

This hearing is adjourned.

[Whereupon, at 12:30 p.m., the hearing was adjourned.]

[Prepared statements, biographical sketch of the nominee, and response to written questions follow:]

PREPARED STATEMENT OF CHAIRMAN PAUL S. SARBANES

I would like to welcome Mr. Harvey L. Pitt this morning before the Committee on Banking, Housing, and Urban Affairs.

The President has nominated Mr. Pitt to be a Member of the U.S. Securities and Exchange Commission and to serve as its Chairman. His nomination papers were completed as of July 9, 2001.

Mr. Pitt earned a Bachelor of Arts degree from Brooklyn College and a Juris Doctor degree from St. John's University.

Mr. Pitt has worked with the securities laws for his entire professional career. After graduating from law school in 1968, he worked at the SEC, rising from working as a Staff Attorney in the Office of the General Counsel to the positions of Chief Counsel of the Division of Market Regulation, Executive Assistant to Chairman Ray Garrett, and General Counsel. He was the youngest General Counsel in the SEC's history. In 1978, Mr. Pitt left the Commission to join the law firm of Fried, Frank, Harris, Shriver & Jacobson, where he is now a partner. In private practice, he has represented virtually every segment of the securities markets, including securities exchanges, trade associations, accountants, publicly traded corporations, corporate officers, broker-dealers, registered representatives, investors, and others.

Mr. Pitt has actively published on securities issues. He has co-authored two legal treatises on financial services: *The Law of Financial Services* and *Securities in the Electronic Age: A Practical Guide to the Law and Regulation.* He has co-authored over 300 published articles and nearly 200 law firm client memoranda on many aspects of the securities laws.

Mr. Pitt belongs to several legal, social, and educational organizations. He also has served on the Board of Trustees of Cardozo Law School, as Chairman of the Practicing Law Institute Annual Securities Law Institute, as Chairman of the Securities Regulation Institute of Northwestern School of Law, and as President of the SEC Historical Society.

The U.S. securities markets are the envy of the world. The Chairman of the SEC plays a critical role in promoting the strength and efficiency of these markets and inspiring trust and confidence among investors. I believe that protecting investors, ensuring the fairness and integrity of our securities markets and aggressively enforcing the securities laws are primary functions of the Commission.

Citizens and institutions invest their money in stocks traded on these markets for a number of reasons. They trust the accuracy of the income statements and balance sheets that public companies file. They rely on the certification of financial statements by accountants. They believe that public companies give them fair disclosure and do not make material information available to some investors before others. They trust market and exchange professionals to execute their orders fairly, without stepping ahead or manipulating the market. And, they assume that the SEC and the self-regulatory organizations under its authority are vigorously enforcing the laws, developing methods to more effectively detect and prosecute violators, and imposing significant punishments and, in the case of fines, collecting those fines.

Mr. Pitt's work at the SEC and representing clients brought before the SEC give him an extraordinary knowledge of both the Federal securities laws, as well as the varieties of misconduct that can harm investors and the markets. We hope, if confirmed, he will use this knowledge and experience to better protect investors and enhance the quality of the securities markets.

We look forward to hearing the testimony of Mr. Pitt.

PREPARED STATEMENT OF SENATOR JON S. CORZINE

Thank you, Mr. Chairman, for holding this hearing. I also want to welcome Mr. Pitt and thank him for joining us here today.

Mr. Chairman, I had the opportunity to sit down with Mr. Pitt earlier this month, and came away from our conversation with great respect for the depth of his knowledge about the many issues affecting America's securities market. He struck me as being fair-minded and balanced in his approach to the complex questions that he will encounter at the agency.

Obviously, in assuming the leadership of the SEC, Mr. Pitt would take on the critical responsibility of maintaining the honesty and integrity of our Nation's securities markets. It is a charge I believe Chairman Levitt sought dutifully, and admirably to uphold, and I would be remiss if I failed to acknowledge his work at the agency.

In my view, maintaining the integrity of America's markets is the SEC's paramount responsibility—because it promotes market efficiency, and ultimately, it reduces the cost of investment.

While I may have, at various points, during my previous career disagreed with the agency, I have long felt that the SEC, particularly under Chairman Levitt's stewardship, has done as credible and effective a job as possible in undertaking the enormous task of managing our markets. And as a result, America's securities markets are the envy of the world.

However, our dominance should never be taken for granted—nor considered a foregone conclusion in perpetuity. If our markets are to remain strong, we must vigorously pursue even greater efficiency, transparency, and competition. Our ability to maintain a position of dominance will be shaped in many ways by the extent to which the SEC works to ensure that our markets remain efficient, reliable, and progressive places to do business.

These characteristics need to be attained in both benign and stressful market environments. In fact, crisis management may ultimately prove to be the attribute by which the effectiveness of the next SEC Chairman is evaluated.

The U.S. securities market has in many ways provided the fuel for the expansion of the global marketplace. Both domestically, and abroad, it has driven economic growth and been a force for global, technological, and cultural change. In doing so, our capital markets have grown stronger, more liquid and more adaptable to ever-changing economic conditions around the world and here at home.

We are in the midst of a period like none other. The democratization of the markets has led to millions of new investors, and 48 percent of U.S. households own equities either directly or indirectly through mutual funds, 401(k) plans or other pension accounts. The socioeconomic demographics of those who invest have changed as well, with more middle-income individuals than ever before now enjoying the benefits of equity ownership and investment in America's capital markets.

Mr. Chairman, I look forward to Mr. Pitt's testimony before the Committee today, and his insights about the direction he will take the SEC in this era of globalization and technology.

I am also looking forward to his thoughts on the ways in which the agency will seek to mitigate market fragmentation; handle the emergence of new trading technologies, and the ways in which he will seek to promote increased competition.

To be certain, there are a great many issues that the SEC will have to deal with immediately—including transaction fees and the pay parity issues that this Committee has sought to remedy. But issues such as the agency's fair disclosure (Regulation FD) requirements, the issues of accounting standards, analyst recommendations, and the issue of payment for order flow are all incredibly important items that must be dealt with as they get to the heart of the integrity and credibility of our markets—and the trust that investors have in them.

Mr. Chairman, I want to thank you again for holding this hearing. I look forward to Mr. Pitt's testimony.

PREPARED STATEMENT OF SENATOR MICHAEL B. ENZI

I thank Chairman Sarbanes for holding this hearing on the nomination of Harvey Pitt, to be a Member of the Securities and Exchange Commission (SEC). Chairman Sarbanes, I appreciate you scheduling this nomination hearing and vote in an expeditious manner.

Mr. Chairman, there are currently only two Commissioners serving at the Securities and Exchange Commission (SEC). The addition of Mr. Pitt will provide the SEC with three out of a total of five Commissioners that are needed. Harvey's tremendous credentials and qualifications are unquestionable. His immense understanding of securities laws and regulations is essential for the post he is about to assume.

The SEC serves an important function for the protection of investors' interests and the integrity of our securities markets. However, it is crucial that the SEC does not issue regulations only in the name of protecting investors. The policymaking process should be accompanied by a cost-benefit analysis approach and the appropriate due diligence in the rulemaking procedures.

I welcome Harvey Pitt to the Banking Committee and look forward to working with him in the future.

PREPARED STATEMENT OF HARVEY L. PITT

MEMBER-DESIGNATE OF THE U.S. SECURITIES AND EXCHANGE COMMISSION

JULY 19, 2001

Chairman Sarbanes, Senator Gramm, Distinguished Members of this Committee:

It is with great respect, and humility, that I appear before you today, to seek your confirmation of President Bush's nomination of me to serve as a Member of the Securities and Exchange Commission. I am deeply grateful to President Bush for the honor he has accorded me by this nomination, as well as by his stated intention to appoint me the next Chair of the Commission, if I am fortunate enough to be confirmed. And, I thank you, Chairman Sarbanes, Senator Gramm, and the Members of the Committee and staff, for your support and expeditious scheduling of this confirmation hearing. I am particularly grateful to my fellow Brooklynite, Senator Schumer, for his kind introduction of me to the Committee.

With your permission, I would like briefly to introduce some of the members of my family here today to witness this important hearing. First, I would like to introduce my wife and best friend, Saree Ruffin Pitt. Next, I would like to introduce my father, Morris Pitt, of New York, who is 87, and without whom I would not be here today. I would also like to introduce my wife's parents, Dalton and Sarah Ruffin, of North Carolina. Finally, I would like to introduce to you my four children, Emily, Jonathan, Robert, and Sally.

I come before this Committee with deep respect for the critical role assigned to Congress in general, and to this Committee in particular, with respect to the important multiple missions of the SEC. If I am confirmed, I pledge to work with you, and the Administration, to ensure that the Commission is a partner, an independent partner to be sure, but not an adversary, in our mutual desire to maintain our capital markets as the fairest for all investors, large and small, and the most efficient in helping our corporations raise needed capital to succeed in highly competitive global markets. This is a critical time in the development and strategic future direction of our capital markets. It is a time for bold and creative thinking, to formulate an agenda that will ensure that the SEC's next decade can be as universally respected and admired as its past, nearly seven, decades.

Seated before you is a first generation American, who has benefited from the manifold opportunities this country offers to people of limited means to achieve a piece of the American Dream. The SEC has a key role to play in overseeing markets that enable millions of Americans to fuel that dream. I have devoted my entire professional life to that role. Over the past 33 years, working first at the SEC, and then in the private sector, as a securities lawyer, I have been blessed with wonderful colleagues, and have been fortunate to enjoy a broad and diverse exposure to the many aspects of securities regulation and enforcement. Nearly a quarter century ago, I was privileged to serve as SEC General Counsel, an experience that shaped my life as a lawyer and counselor. As a result of my experiences within and outside the Commission, I have enormous respect for the agency, its mandate, and the dedicated people who strive to give Congresses' legislative words true meaning, day in and day out. Having an opportunity to serve the investing public, and the needs of our capital markets, would make my fondest dreams a reality.

There are several goals I would pursue, if I am confirmed and become the next SEC Chair. First, I will ensure vigilant enforcement of sound rules that protect all investors against fraudulent, deceptive, and manipulative misconduct and that make our capital markets the world's most honest, efficient, and envied. While I am proud of my past legal practice on behalf of private clients, I want to assure you that my commitment to the public interest and public investors, both small and large, is genuine, strong, and all encompassing.

Second, I will focus on the agency's mission to nurture a climate that is conducive to, and encourages, the creation of capital. Much has changed since the SEC's birth—new competition at home and abroad, new technology, instantaneous communications, exponential increases in international trade, the creation of more complex financial products, and greater involvement in our markets by both American citizens and overseas investors. Capital is the life blood of innovation. Emerging businesses, and established multinational conglomerates, create jobs, research and development breakthroughs, and higher standards of living. I believe the Commission has a mandate to ensure efficient, cost-effective, and seamless capital-raising.

Third, to protect American capital markets and their participants, we must ensure that our marketplaces remain vigorous and efficient. I would like the SEC to lead a review of the requirements it administers, and the regulations it imposes, to be certain they are sound, reasonable, cost-effective, and promote competition. Our securities laws are, in the main, nearly 70 years old, and reflect a time, and a state

of technology, light years away from what we now confront daily. Commission rules are rapidly becoming the securities equivalent of the Internal Revenue Code, making it difficult for those obliged to comply with the rules to understand their obligations, and making it impossible for those who benefit from those rules to understand the rights they have and how to enforce them. I believe the Commission, working with this Committee and its House of Representatives counterpart, is obligated to ensure that statutory and regulatory requirements do not needlessly increase costs or drive transactions offshore, where investors often lack protection of the laws the Commission enforces.

Finally, but not least, I believe Government is a service industry. To make Government meaningful, efficient, and competent, agencies like the SEC must reflect a commitment to service. If confirmed, I will devote my total and untiring efforts to enhancing the Commission's responsiveness to all its constituencies, with respect, professionalism, clarity, and expedition. That is the superb legacy of the SEC to which I am fully committed. If confirmed, I eagerly look forward to working with you during the coming years, and I feel confident about the ability of all of us working together, with the best interests of investors, issuers, and the markets in mind, to meet these challenges.

Thank you, Mr. Chairman, Senator Gramm, and Members of the Committee, for this opportunity. I would be pleased to try to answer any questions you may have.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Pitt, Harvey L.

Position to which nominated: Chairman, Securities and Exchange Commission

Date of birth: February 28, 1945 **Place of birth:** New York, New York

Marital status: Married **Full name of spouse:** Sarah ("Saree") Ruffin Pitt

Name and ages of children:
Emily Laura Pitt, 32
Jonathan Bradley Pitt, 28
Robert Garrett Pitt, 11
Sara Dillard Pitt, 9

Education:

Institution	Dates attended	Degrees received	Dates of degrees
St. John's University	9/65-6/68	JD	6/68
Brooklyn College	9/61-6/65	BA	6/65
Stuyvesant High School	9/58-6/61	HS Diploma	6/61

Honors and awards: **List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.**

Institute for Human Relations' Judge Learned Hand Human Relations Award (1988)

Thomas O'Boyle Distinguished Visiting Practitioner, University of Pennsylvania, 1984

SEC Distinguished Service Award, 1977

Federal Bar Association's Outstanding Younger Federal Lawyer Award, 1975

Memberships: **List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.**

Organization	Office Held (if any)	Dates
Religious		
Christ Church of Georgetown (Episcopal)	Member	1984-Present
Temple Sinai (Jewish)	Member	1984-Present
Professional		
American Bar Association	Member	1968-Present
Federal Bar Association	Member	1972-Present
Association of the Bar of the City of New York	Member	1978-Present
District of Columbia Bar Association	Member	1981-Present
New York Stock Exchange Legal Advisory Committee	Member	1982-1995
NASD Legal Advisory Committee	Member	1998-2001
Association of the SEC Alumni	Member	1995-Present
Social		
City Club of Washington, D.C.	Member	1986-Present
George Town Club	Member	1982-Present
Bethesda Country Club	Member	1999-Present
Educational		
Board of Trustees of Cardozo Law School	Member	1992-2000
PLI Annual Securities Law Institute	Chairman	1982-1993
Securities Regulation Institute (Northwestern School of Law)	Chairman	2000-May, 2001
Charitable		
SEC Historical Society	President	2000-May, 2001
Political		
Republican Senatorial Inner Circle	Member	1993-Present

Employment record: List below all positions, held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

Partner, Fried, Frank, Harris, Shriver & Jacobson, Washington, DC, September 1978 - Present

General Counsel, US Securities and Exchange Commission, Washington, DC, 1975-August 1978

Executive Assistant to the Chairman, US Securities and Exchange Commission, Washington, DC, 1973-1975

Chief Counsel, Division of Market Regulation, US Securities and Exchange Commission, Washington, DC, 1972-1973

Special Counsel, Office of the General Counsel, US Securities and Exchange Commission, Washington, DC, 1971-1972

Editor, Institutional Investor Study, US Securities and Exchange Commission, Washington, DC, 1971

Attorney, Office of the General Counsel, US Securities and Exchange Commission, Washington, DC, 1970-1971

Legal Assistant to the Commissioner, US Securities and Exchange Commission, Washington, DC, 1969

Attorney, Office of the General Counsel, US Securities and Exchange Commission, Washington, DC, 1968-1969

Legal Intern, US Maritime Administration, Washington, DC, June 1967 through August 1967

Cookie Salesman, National Biscuit Company, Brooklyn, NY, Summers of 1966, 1965 and 1964

Bookstore Clerk, Barchas Book Exchange, Brooklyn, NY, July 1962

Supermarket Clerk and Cashier, Waldbaum's Inc., Garden City, NJ, Summers of 1963, 1962, 1961, 1960 and 1959

Government experience: **List any experiences in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.**

General Counsel, US Securities and Exchange Commission, Washington, DC, 1975-August 1978

Executive Assistant to the Chairman, US Securities and Exchange Commission, Washington, DC, 1973-1975

Chief Counsel, Division of Market Regulation, US Securities and Exchange Commission, Washington, DC, 1972-1973

Special Counsel, Office of the General Counsel, US Securities and Exchange Commission, Washington, DC, 1971-1972

Editor, Institutional Investor Study, US Securities and Exchange Commission, Washington, DC, 1971

Attorney, Office of the General Counsel, US Securities and Exchange Commission, Washington, DC, 1970-1971

Legal Assistant to the Commissioner, US Securities and Exchange Commission, Washington, DC, 1969

Attorney, Office of the General Counsel, US Securities and Exchange Commission, Washington, DC, 1968-1969

Legal Intern, US Maritime Administration, Washington, DC, June 1967 through August 1967

Published Writings: **List the titles, publishers and dates of books, articles, reports or other published materials you have written.**

Articles

"Utilizing The Federal Securities Laws To Clear The Air, Clean The Sky, Wash the Wind," HOWARD LAW REVIEW, Vol. 16, p. 831, 1971 (Theodore Sonde & Harvey L. Pitt)

"SEC Injunctive Actions, Review of Securities Regulation." Vol.6 No.5, pp. 955, March 7, 1971 (Harvey L. Pitt & Jerry W. Markham)

"Securities Acts Amendment of 1975 -- "Effect of New Procedures, Judicial Review,"" NEW YORK LAW JOURNAL PRESS, SEC '76 Vol. IV, p.71, 1976 (Harvey L. Pitt)

"Disciplining the Professional", NYU 1st Ann. Inst., on Securities Laws and Regulations 1977 (Harvey L. Pitt)

"An SEC Insider's View of the Utility of Private Litigation Under the Federal Securities Laws," SECURITIES REGULATION LAW JOURNAL, Vol. 5, No.1 -- Spring 1977 at p.3 (Harvey L. Pitt)

"The Supreme Court and the SEC," NEW YORK LAW JOURNAL April 18, 1977 (Harvey L. Pitt)

"Supreme Court Must Resolve Uncertainties Caused By Hochfelder," NEW YORK LAW JOURNAL, Dec. 19, 1977 (Harvey L. Pitt)

"NSMC --Lost opportunity to Resolve Issues", LEGAL TIMES, October 23, 1978 (Harvey L. Pitt)

"Standing to Sue Under The Williams Act After Chris-Craft: A Leaky Ship On Troubled Waters", 34 BUSINESS LAW 117, 1978 (Harvey L. Pitt)

"A Massive Undertaking On Securities Laws -- Review of 'the Regulation of Money Managers'" Book by Tamar Frankel NATIONAL LAW JOURNAL, 1978 (Harvey L. Pitt)

"Procedures To Limit Third Party Disclosures", The National Law Journal, January 22, 1979 (Harvey L. Pitt)

"Daniel: A Seed For More Difficulties For The SEC", Legal Times, January 29, 1979 (Harvey L. Pitt)

"Implied Rights: While Ali Debates", Court Eviscerates December, 3 1979 (Harvey L. Pitt & Carol H. Israel)

"Ray Garrett, Jr. -- A Personal Remembrance", SEC Employee News, January 1980 (Harvey L. Pitt & James H. Schropp)

"SEC: Do Confidentiality Rules Satisfy Chrysler?", Legal Times, February 4, 1980 (Harvey L. Pitt & James H. Schropp)

"Chiarella Court: Limits on Novel 10b-5 Actions", Legal Times, March 31, 1980 (Harvey L. Pitt)

"SEC Ability To Administer Flexibly Hurt by Aaron", Legal Times, June, 16, 1980 (Harvey L. Pitt)

"After The Fall: The Ins and Outs of Rule 10b-5, PLI--12th Ann. Institute on Securities Regulation, 1981 (Harvey L. Pitt)

"Recent Cases Chart Use of Business Judgment Rule", Legal Times, January 19, 1981 (Harvey L. Pitt)

"The 'Upjohn Decision': 'To Thine Own Self Be True'", Legal Times, January 26, 1981 (Harvey L. Pitt)

"The Georgetown Proposals", The Business Lawyer, Vol.36 No. 4, July 1981 (Harvey L. Pitt)

"Preserving Corporate Confidences: An Overview", PLI -- 13th Annual Institute on Securities Regulation, 1982 (Harvey L. Pitt)

"High Stakes Attend Congress' Glass-Steagall Review", Legal Times, February 15, 1982 (Harvey L. Pitt and Julie L. Williams)

"Weaver Could Invite New Generation Of Litigation", Legal Times, March 15, 1982 (Harvey L. Pitt)

"SEC, CFTC Jurisdictional Détente Undone By Court", Legal Times, April 12, 1982 (Harvey L. Pitt)

"Implied Remedies Pendulum May Be Swinging Back", Legal Times, May 17, 1982 (Harvey L. Pitt)

"Should SEC's Shelf Rule Be Shelved?", National Law Journal, May 17, 1982 (Harvey L. Pitt & Julie L. Williams)

"Hostile Tender Offers Now Omnipresent Fact Of Life", Legal Times, July 19, 1982 (Harvey L. Pitt)

"Huddleston' Gives New Vitality To SEC's Rule 10b-5", Legal Times, January 31, 1983 (Harvey L. Pitt)

"Mergers and Acquisitions Present A Variety of Legal Considerations and Problems", American Banker, February 25, 1983 (Harvey L. Pitt & Julie L. Williams)

"Ten Aspects of White Collar Practice They Don't Teach in Law School," George Washington School of Law, March 31, 1993 (Harvey L. Pitt)

"Bank Directorate Case Sends Warning To Enforcers", Legal Times, June 20, 1983 (Harvey L. Pitt)

"'Dirks' Deals Blow To SEC Insider Trading Program", Legal Times, July 11, 1983 (Harvey L. Pitt)

"The Glass-Steagall Act: Key Issues For the Financial Services Industry", Securities Regulation Law Journal, Vol. 11, No. 3, p. 234, Fall 1983 (Harvey L. Pitt & Julie L. Williams)

"The Convergence of Commercial and Investment Banking: New Directions in the Financial Services Industry", Journal of Comparative Business and Capital Market Law pp. 137-193, 1983 (Harvey L. Pitt & Julie L. Williams)

"Thrift Institution Acquisitions: Selective Offensive and Defensive Considerations", The Business Lawyer, Vol. 39, pp. 171-207, November 1983, (Harvey L. Pitt & Julie L. Williams)

"'SIA v. Comptroller': Veiled Victory For National Banks?", Legal Times, at 15, November 14, 1983 (Harvey L. Pitt, Thomas P. Vartanian & David L. Ansell)

"People in Glass- Steagalls Shouldn't Throw Stones", Legal Times, at 14, July 9, 1984 (Harvey L. Pitt)

"'Byrd': First Step To Heighten Role of Arbitration?", Legal Times, at 15, March 11, 1985 (Harvey L. Pitt)

"Attorney Client Privilege" Case Law, Vol. 10, p. 179, 1985 (Harvey L. Pitt)

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"1987 Insider Trading Proscriptions Act", NYLJ, at 5, June 25, 1987 (Harvey L. Pitt, John F. Olson & Karen L. Shapiro)

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"New Act May Help Clarify Law", NYLJ, at 21, July 27, 1987 (Harvey L. Pitt & Karen L. Shapiro)

"Disputes Under the Federal Securities Laws: An Analysis of Shearson/ American Express v. McMahon", Insights, Vol. 1, No. 3, September 1987 (Harvey L. Pitt & James H. Schropp)

"Arbitration of Securities Law Disputes Comes of Age. An Analysis of Shearson/American Express V. McMahon", TO OUR CLIENTS, October 1,1987 (Harvey L. Pitt & James H. Schropp)

"Winans Case: The Limits Of Securities Law", Legal Times, Bowne Digest for Corp. & Sec. Laws, Update on Insider Trading, November 23, 1987 (Harvey L. Pitt & Karen L. Shapiro)

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"Liability for Insider Trading Under the Federal Securities Laws", 19 Vol. 1, Inst. on Sec. Reg. 213 (PLI) (1987) (Harvey L. Pitt, Hillary L. Synder & Jesse M. Caplan)

"The Limits Of Fraud: An Analysis of the Winans Case," Insights, Vol. 2, No. 1, January 1988 (Harvey L. Pitt)

"Update on Insider Trading," Bowne Digest for Corporate & Securities Lawyers, Volume 2, Number 2, February 1988 (Harvey L. Pitt)

"The Revised Insider Trading Proscriptions Act Of 1988: A Legislative Remedy For A Problem That Persists," American Criminal Law Review, Vol. 26, No. 1, Summer 1988 (Harvey L. Pitt & Karen L. Shapiro)

"The Insider Proscriptions Act of 1987: A Legislative Initiative For A Sorely Needed Clarification of the Law Against Insider Trading," Alabama Law Review, Vol. 39, No. 2, Winter 1988, (Harvey L. Pitt & Karen L. Shapiro)

"An Analysis of the Insider Trading and Securities Fraud Enforcement Act of 1988," Insights, Vol.3, No. 1, January 1989 (Harvey L. Pitt & Karl A. Groskaufmanis)

"A Fair Day's Pay For a Fair Day's work. A Letter to the Editor" Washington Post February 16, 1989 (Harvey L. Pitt)

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"RICO Ruling Fuels Litigation," The Recorder, July 24, 1989 (Harvey L. Pitt and Dixie L. Johnson)

"Japanese Insider Trading Regulation: An American Perspective," Japanese Economic Journal, August 18, 1989 (Harvey L. Pitt & Karl A. Groskaufmanis)

"A Second Look At Corporate Codes Of Conduct," Insights, at p. 3, September 1989 also in Director's Monthly, Vol. 13, No. 11, November 1989 (Harvey L. Pitt & Karl A. Groskaufmanis)

"Insider Trader Procedures For Publicly-Held Companies," The Corporate Executive, Vol. III, No. 4, September/ October 1989 (Harvey L. Pitt & Karl A. Groskaufmanis)

"Minimizing Corporate Civil and Criminal Liability: A Second Look at Corporate Codes of Conduct," Corporate Criminal Liability Reporter, Vol. 4, Nos. 1-3 (1990) (Harvey L. Pitt & Karl A. Groskaufmanis)

"Securities Regulation by Enforcement: A Look Ahead At the Next Decade," Yale Journal of Regulation, Vol. 7, No. 1, Winter 1990 (Harvey L. Pitt and Karen L. Shaprio)

"To Preclear Or Not To Preclear: A Dilemma In Preventive Lawyering," Corporate Counsel, Jan. 1990 (Harvey L. Pitt & Karl A. Groskaufmanis)

"Paying $470,000 For The Unlawful Trades Of Others," The Corporate Executive, Vol. IV, No. 1, January/ February 1990 (Harvey L. Pitt & Karl A. Groskaufmanis)

"Unions At The Table," The National Law Journal, pp. 51-55, February 5, 1990 (Harvey L. Pitt & Peter M. Sherman)

"Why a Corporate Code May Not Protect You," Across the Board, May 1990 (Harvey L. Pitt & Karl A. Groskaufmanis)

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"Insider Trading Decision Invites Congressional Fix," Texas Lawyer, May 28, 1990, page 36 (Harvey L. Pitt & Karl A. Groskaufmanis)

"2nd Circuit Dramatizes Need for "Insider" Statute," New Jersey Law Journal, May 31, 1990 (Harvey L. Pitt & Karl A. Groskaufmanis)

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MD&A Through The Eyes Of Management: A Closer Look At the SEC's Caterpillar Decision, Apr. 23, 1992 (Harvey L. Pitt, Richard A. Steinwurtzel & Yasmine M. Gado)

Limitations on Privileges in Governmental Enforcement Proceedings, May 4, 1992 (Harvey L. Pitt & Michael H. Rauch)

Eagle on the Spreadsheet: The SEC's New Accounting Activism, May 26, 1992 (Harvey L. Pitt & David B. Hardison)

Proxy Reform and Executive Compensation Reporting Requirements: A New Era of SEC Activism, Oct. 29, 1992 (Harvey L. Pitt, Richard A. Steinwrutzel, Gail L. Weinstein & Anthony J. Renzi)

Corporate Introspection In the Nineties: "To Thine Own Self Be True," Dec. 8, 1992 (Harvey L. Pitt & Matt T. Morley)

Practical Guidance In Responding To The SEC's New Proxy and Executive Compensation Disclosure Rules, Dec. 10, 1992 (Harvey L. Pitt)

Avoiding Public Controversy When Disclosing Major Corporate Litigation Initiatives, Jan. 19, 1993 (Harvey L. Pitt & Richard A. Sauber)

Expanding Parameters of Insider Trading Liability, Mar. 19, 1993 (Harvey L. Pitt & Karl A. Groskaufmanis)

Shareholder Suits Suggest Some Lessons, Mar. 19, 1993 (Harvey L. Pitt & Karl A. Groskaufmanis)

Liberating Corporate Professional Advisors from the Taint of RICO Liability, Mar. 23, 1993 (Harvey L. Pitt & Dixie L. Johnson)

A Constructive Appraisal of the SEC's Enforcement Program, May 19, 1993 (Harvey L. Pitt, Michael H. Rauch & Audrey Strauss)

Through A Glass Starkly: A Practical Guide for Management's Forward-Looking Disclosures, June 3, 1993 (Harvey L. Pitt & Matt T. Morley)

"Possession" May Be More Than Nine-Tenths of the Law of Insider Trading: The Impact of the Teicher Opinion, June 11, 1993 (Harvey L. Pitt & Karl A. Groskaufmanis)

A Practical Guide to Environmental Disclosure, Dec. 9, 1993 (E. Donald Elliott, Matt T. Morley, Harvey L Pitt & Mark Koehn)

Recent SEC Actions Underscore The Critical Need For Corporate Compliance Procedures, Dec. 11, 1993 (Drexel and Prudential) (Harvey L. Pitt)

Complying With Corporate Disclosure Obligations When Contemplating Strategic Planning Options, Dec. 15, 1993 (Time Warner) (Harvey L. Pitt & Matt T. Morley)

Of Deep Pockets, Frivolous Premises and Statutory Makeweights: The Demise of Implied Federal Securities Law Aiding and Abetting Liability, Apr. 29, 1994 (Central Bank) (Harvey L. Pitt)

Recommendations On Personal Trading Raise the Stakes, But Money Managers Should Stay In The Game, May 12, 1994 (Harvey L. Pitt, Thomas S. Harman & Cynthia M. Fornelli)

Establishing Audit Standards by Regulatory Fiat, July 7, 1994 (Harvey L. Pitt & David B. Hardison)

Toward a Real Safe Harbor For Forward-Looking Statements: A Reassessment of SEC Rule 175, Aug. 10, 1994 (Harvey L. Pitt, Karl A Groskaufmanis & M. Gilbey Strub)

Where Personal Trading by Portfolio Managers is Involved, Abstinence Makes the SEC's Heart Grow Fonder, Dec. 14, 1994 (Harvey L. Pitt, Thomas S. Harman, Dixie L. Johnson & Cynthia M. Fornelli)

"Prospecting for Cases": Personal Trading by Portfolio Managers, Redux, Dec. 14, 1994, (Harvey L. Pitt & Dixie L. Johnson)

The Cooper Industries Letter: A Seminal Shift at the SEC, Jan. 31, 1995 (Harvey L. Pitt & Karl A. Groskaufmanis)

In Unitron Case, the Delaware Supreme Court Provides Guidance on Defensive Measures, Mar. 17, 1995 (Harvey L. Pitt, Andrew P. Varney & Mark Fajfar)

Update On Recent Acquisition Tactics, Mar. 17, 1995 (Harvey L. Pitt, Stephen I. Glover & Mark Fajfar)

"Contracting with America The Need For Securities Litigation Reform and a Midpoint Assessment of H.R. 1058," Apr. 10, 1995 (Harvey L. Pitt, Karl A. Groskaufmanis & Evan J. Falchuk)

"Courting Disaster": The Factors that Prompt the SEC to Seek Injunctive Relief, Apr. 12, 1995 (Harvey L. Pitt, Dixie L. Johnson & Robert C. Westerfeldt)

Personal Trading by Portfolio Managers Revisted: The Institute's Recommendations a Year Later, June 5, 1995 (Harvey L. Pitt & Cynthia M. Fornelli)

Administrative TROs: The SEC's New Temporary Cease and Desist rules, September 28, 1995 (Harvey L. Pitt & Dixie L. Johnson)

SEC Suspensions and Bars, September 28, 1995 (Harvey L. Pitt, Dixie L. Johnson & Michael J. Rivera)

The Gibson Greetings Settlement: Sending an Unusual Greeting to, End-Users of Derivatives, November 2, 1995. (Harvey L. Pitt, David B. Hardison & **DVS)**

Promises Made, Promises Kept: Practical Implications Of The Securities Litigation Reform Act, December 27, 1995. (Harvey L. Pitt & Karl A. Groskaufmanis)

Caught in the Act: Individual Liability For Enterprise Misconduct, January 19, 1996 (Harvey L. Pitt & Dixie L. Johnson)

Considerations in Corporate Spinoffs, January 25, 1996. (Harvey L. Pitt, Stephen I. Glover & Lanae Holbrook)

More Than "Classical Gaas": Audits and Corporate Illegality Under the Litigation Reform Act, February 5, 1996. (Harvey L. Pitt, David B. Hardison & Lawrence R. Bard)

A Plaintiff Wail: The New Role of Institutional Investors Under The Securities Litigation Reform Act, March 12, 1996, (Harvey L. Pitt, Dixie L. Johnson & Lanae Holbrook)

Proposed Amendments to the Trading Practices Rules, April 19, 1996, (Harvey L. Pitt, Richard A Steinwurtzel & Mark J. Dorsey)

It's Not the Money, It's the Principal, April 22, 1996, (Harvey L. Pitt, Thomas S. Harman & Monica L. Parry)

To No Avail-Complaining About Cramdown Versus Negotiated Spinoffs, July 1996, (Harvey L. Pitt, Stephen I. Glover & Lanae Holbrook)

Playing Favorites: The SEC's Latest Allocations Case, August 16, 1996, (Harvey L. Pitt, Dixie L. Johnson & Cynthia M. Fornelli)

Living With Securities Litigation Reform: Lessons From The Initial Litigation, October 31, 1996, (Harvey L. Pitt, Karl A. Groskaufmanis, Daniel E. Loeb & John C. Sullivan)

Regulation M: A New Era of Trading Practices Regulation, January 9, 1997 (Stuart Gelfond, Valerie Jacob, Timothy Peterson, Harvey L. Pitt, Richard A. Steinwurtzel, Kevin Felix, K. Susan Grafton, Mark J. Dorsey, David Robbins, Edward Rosenthal)

Talking the Talk and Walking the Walk: Directors Duties to Uncover and Respond to Management Misconduct, February 21, 1997, (Harvey L. Pitt, Karl A. Groskaufmanis & Vasiliki B. Tsaganos)

3 Years to 2 Years, 2 Years to 1Year and 40 Days to Possibly 2 Years: The Reshuffling of Holding and Restricted Periods; Adopted Amendments to Rule 144 and 145 and Proposed Amendments to Regulation S and Rules 144, 145

and 430A, February 24, 1997 (Harvey L. Pitt, Karl A. Groskaufmanis, Richard A. Steinwrutzel, Stuart Gelfond, Valeri Jacob, Timothy Peterson, Kevin Felix, David Robbins and Edward Rosenthal)

Misappropriating Certainty from the Securities Markets: A Practitioner's Primer on the O'Hagan Decision, August 6, 1997 (Harvey L. Pitt, Karl A. Groskaufmanis & Edward B. Whittemore)

Avoiding Spiders on the Web: Rules of Thumb for Issuers Using Web Sites and E-Mail, August 11, 1997 (Harvey L. Pitt & Dixie L. Johnson)

SEC Amends Regulation S and Imposes Additional Burdens on Offshore Offerings of Domestic U.S. Reporting Issuers' Equity Securities, March 4, 1998 (Harvey L. Pitt, Kenneth Blackman, Stuart Gelfond, Allen Isaacson, Valerie Jacob, Richard A. Steinwurtzel, Jessica Forbes, K. Susan Grafton, Stephen I. Glover, Karl A. Groskaufmanis, Andrey P. Varney, Timothy Peterson, Daniel Bursky)

The Aircraft Carrier: The SEC Proposes Sweeping Reforms to the Rules Governing Securities Offerings, December 9, 1998 (Harvey L. Pitt, Kenneth Blackman, Joseph Stern, Valerie Jacob, Michael Levitt, Richard A. Steinwrutzel, Stephen I. Glover, Lanae Holbrook, **RIS**, Edward Rosenthal, Timothy Peterson, Daniel Bursky, Sean Flynn, and Eric Cafritz)

The SEC Proposes Revisions to the Disclosure Requirements for the Foreign Private Issuers to Conform to IOSCO Standards, March 23, 1999 (Harvey L. Pitt, Kenneth Blackman, Stuart Gelford, Joseph Stern, Valerie Jacob, Kahlil Reid, Richard A. Steinwrutzel, Stephen I. Glover, Lanae Holbrook, **RIS,** Edward Rosenthal. Timothy Peterson, Daniel Bursky, Sean Flynn, Robert Mollen, and Alon Harnoy)

Tougher Standards for Audit Committees: The Report of the "Blue Ribbon" Committee, May 15, 1999 (Harvey L. Pitt, David E. Birenbaum, David B. Hardison, Mark Fajfar, James P. Baetzhold, Charles M. Nathan, Robert Schwenkel)

The SEC Adopts IOSCO Disclosure Standards for Foreign Private Issuers, October 5, 1999 (Kenneth Blackman, T. Christopher, Stuart Gelfond, Valerie Jacob, Lee Parks, Joseph Stern, Stephen I. Glover, Harvey L. Pitt, Richard A. Steinwurtzel, Andrew P. Varney, Edward Rosenthal, Robert P. Mollen, Timothy Peterson, K. Wiedemann, Daniel Bursky, A. Mamby, Eric Cafritz)

Once More Into the Breach: Chinese Wall Contingency Plans, May 30, 2000 (Harvey L. Pitt & David Fenimore)

Rethinking Disclosure Policies and Practices in the Wake of the SEC's New Selective Disclosure Rules, September 15, 2000 (Harvey L. Pitt, **et al.**)

Political affiliations and activities:

List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Member, Republican Senatorial Inner Circle, 1993-Present

Member, Republican Party

Political Contributions:

Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

1993	
March 31	The Heritage Foundation $1,000
Sept. 24	D'Amato Victory Committee $2,000
1994	
9/9	Pataki for Governor $2,500
10/4	Republican Senatorial Inner Circle $1,000
1995	
2/7	Friends of D'Amato $1,000
10/12	Republican Senatorial Inner Circle $1,000
10/23	Dole for President $2,000
1996	
3/19	Chairman Advisory Board $5,000
1997	
1/14	Friends of Ruth Messinger $500
4/18	Republican Senatorial Inner Circle $1,000
5/5	Friends of Senator D'Amato $1,000
1998	
3/6	John Dingell for Congress $1,000
5/29	Governor Bush Committee $5,000
10/22	NY State Republican Committee $5,000
1999	
11/5	Friends of Giuliani $1,000
11/12	Republican Senatorial Inner Circle $1,000
3/12	Friends of Pataki $500
3/26	Gov. George W. Bush Presidential Exploratory $2,000

6/30/	Lazio 2000 $1,000
3/99	Hatch Election Committee $2,000

2000
None

2001

4/2	Friends of Pataki $500.00
2/8	Leadership PAC 2002 ($1,000)

Qualifications: **State fully your qualifications to serve in the position to which you have been named.** (attach sheet)

See Attachment A.

Future employment relationship:

1. **Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.**

I am presently a partner in the law firm of Fried, Frank, Harris, Shriver & Jacobson (the "Firm"). I certify that, upon confirmation, I will resign from this position and will sever all other ties with the Firm. I shall receive a lump sum payment of my capital account and partnership share calculated on service performed to the date of my resignation. I will also receive, in accordance with the partnership agreement, a termination payment in recognition of my past service. Pursuant to the partnership agreement, the amount of the termination payment will be determined prior to my withdrawal from the Firm and will be a fixed sum not to exceed my share of the Firm's income for the previous fiscal year. The Firm has previously provided termination payments pursuant to the partnership agreement to partners departing for public service activities, including non-profit organizations, academia and government service. For tax planning purposes, I will receive the termination payment in a lump sum early in 2002. These amounts are not contingent on any future services that I will provide to the Firm, nor are they tied to the future financial fortunes of the Firm.

2. As far as can be forseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

I have no plans after completing government service to resume employment, affiliation or practice with the law firm of Fried, Frank, Harris, Shriver & Jacobson.

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

Potential conflicts of interests:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

Certain of my financial holdings listed in Attachments C and D are held in a 401K plan sponsored by the law firm of Fried, Frank, Harris, Shriver & Jacobson ("the Firm") or in the Firm's Profit Sharing Plan. The Firm makes no contribution to these holdings, and I act as my own trustee. I shall continue to hold securities in these plans and shall make a final contribution to the Profit Sharing Plan in March 2002, pursuant to the

terms of the plan, and based upon my actual calendar year 2001 earnings.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

See Attachments B, C, D, E, and F.

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

As a partner in the law firm of Fried, Frank, Harris, Shriver & Jacobson, I represented clients in connection with issues involving the Federal securities laws. A list of those clients that might in any way constitute or result in a possible conflict of interest is set forth as Attachment F.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

I have, on occasion, monitored, reviewed and analyzed proposed legislation on behalf of clients. In connection with these activities, no position was taken with respect to any proposed legislation. I was never engaged by any client for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

If confirmed as SEC Chairman, as required by 18 U.S.C. §208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any other persons whose interests are imputed to me, unless I first obtain a written waiver, pursuant to section 208(b)(1), or qualify for a regulatory

exemption, pursuant to section 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse, minor children, or any general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In order to avoid potential conflicts of interest under section 208, I will divest my equity holdings in all publicly-traded companies. These entities are listed in Attachment B. Furthermore, as custodian for my minor children, I will divest their equity holdings in the entities in Attachment B. My spouse will also divest her equity holdings in the entities in Attachment B. These divestitures will be made within 90 days of my appointment. Until these divestitures have been completed, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of these entities, unless I first obtain a written waiver or qualify for a regulatory exemption.

I also understand that the interests in registered investment companies listed in Attachment C present a potential conflict of interest under section 208(a). I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on my financial interests in these investment companies, unless I first obtain a written waiver or qualify for a regulatory exemption. Under the rules restricting the securities transactions and holdings of members of the Securities and Exchange Commission, 17 C.F.R. 200.735-5(k), I may only

hold registered investment companies that are diversified within the definition of section 5(b)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-5(b)(1). All of the holdings listed in Attachment C fall within this definition. However, because the John Hancock Financial Industries Fund is a sector mutual fund under 5 C.F.R. 2640.102(q), I have a financial interest in the fund's holdings within the financial industries sector. Because many of these holdings are in entities directly regulated by the Securities and Exchange Commission, I will divest this holding within 90 days of my confirmation.

I also understand that the holdings in debt securities listed in Attachment D present a potential conflict of interest under section 208(a), although it has been determined that, with two exceptions, it is not necessary at this time for me to divest these interests. I will, however, divest my interest in the Merrill Lynch & Co. Note paying 7% interest through May 15, 2008, and the NM Merrill Lynch Zero Bond due August 30, 2013, within 90 days of my confirmation. With respect to all debt securities listed in Attachment D, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the willingness or ability of the issuer to fulfill its obligations or on the market value of the bond, unless I first obtain a written waiver or qualify for a regulatory exemption.

I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the willingness or ability of the insurance companies listed in Attachment E to fulfill their

obligations under my insurance policies, unless I first obtain a written waiver or qualify for a regulatory exemption.

I will continue to hold my interest in FW/IP Associates Joint Venture, a private limited partnership. I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of FW/IP Associates Joint Venture, or on the holdings of that partnership (which are not publicly traded): Intersouth Venture Capital and its investments in Concept Fabrics Inc., Lambda Technologies Inc., and nTouch, unless I first obtain a written waiver or qualify for a regulatory exemption.

I will not participate in any particular matter involving specific parties which is likely to have a direct and predictable effect on the financial interests of a member of my household, where it is determined that the circumstances would cause a reasonable person with knowledge of the relevant facts to question my impartiality in the matter, unless I have been authorized to participate under the provisions of 5 C.F.R. Part 2635, Subpart E. In addition, for one year following my appointment, I will not participate in any particular matter involving specific parties in which the law firm of Fried, Frank, Harris, Shriver & Jacobson is or represents a party, or in which to my knowledge a person for whom I have served as attorney within the last year is or represents a party, unless I have been authorized to participate under the provisions of 5 C.F.R. Part 2635, Subpart E. Furthermore, for one year following my resignation as Chairman of the Securities Regulation Institute associated with the Northwestern University School of Law and as President of the SEC Historical Society, I will not participate in any particular matter involving specific parties in which Northwestern University or the SEC Historical Society is or represents a party, unless I am authorized to participate under the provisions of 5 C.F.R. Part 2635, Subpart E.

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

Not Applicable

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

Not Applicable

[If pages 48-50 are missing, you have received a non-confidential version of this document.]

Signed: Nancy L. Pitt Date: 07/10/01

The undersigned certifies that the information contained herein in true and correct.

Attachment A

Qualifications:

For thirty-three years my professional life has focused on the primary mission of the Securities and Exchange Commission — administering and enforcing the Federal securities laws to protect investors, and to maintain fair, honest and efficient markets. I began my professional career as a lawyer at the Securities and Exchange Commission, serving to administer and enforce those Federal securities laws for a 10-year period, including three years as General Counsel to the Commission. In the subsequent 23 years as a partner of a major law firm engaged in private practice, I have represented clients from all segments of the industries that the SEC regulates.

I have observed at close hand the effects of regulation on the markets, as well as public companies and other market participants, regulated persons and entities. I understand the need to weigh the costs against the benefits of regulation. I am committed to the enduring principles that have made the Federal securities laws so effective, investor protection and efficient capital formation — and have a strong desire to work to promote the ability of American businesses to raise capital to create jobs and enhance our collective lives through fair and efficient capital markets.

Attachment B – Publicly Traded Equity Securities

Alcoa Inc.
Amerus Group Co.
AT&T Corp.
American Home Products
Baxter International
BP Amoco PLC
Chubb Corp.
Cisco Systems Inc.
Coca-Cola
Daimler-Chrysler AG
Duke Energy Corp.
Ericsson LM Tel.
Exxon-Mobil Corp.
General Electric
Hewlett Packard
High Point Bank Corp.
Ingersoll Rand Company
Intel Corp.
IBM
Johnson & Johnson
International Paper Co.
Marsh & McClennan Inc.
McGraw-Hill Companies Inc.
Merck & Co. Inc.
Mettler Toledo International Inc.
Microsoft
Nike Inc.
Norfolk Southern Corp.
Pepsico Inc.
Pfizer Inc.
Philip Morris Companies
Raytheon Company
Royal Dutch Petro NY
Sara Lee Corp.
Sprint Corp.
SunTrust Banks Inc.
Tribune Co.
Tyco International Limited
Verizon Communications Company
Wachovia Corp.

Attachment C – Registered Investment Companies

EQ/Alliance Money Market Fund
Federated Tax Free Obligations Fund
Fidelity Equity Income Fund
Fidelity Growth & Income Fund
Fidelity Magellan Fund
Fidelity U.S. Government Reserves Fund
First Union Premium Money Market Fund
John Hancock Financial Industries Fund
Merrill Lynch Basic Value Fund
Merrill Lynch Capital Fund
Merrill Lynch CMA Money Fund
Merrill Lynch Global Growth Fund
Merrill Lynch Large Cap Growth Fund
Merrill Lynch Small Cap Value Fund
Merrill Lynch Broadband Portfolio 2001 Sr. A Defined Asset UIT
Merrill Lynch European Growth Portfolio Defined Asset UIT
Merrill Lynch Focus Series European Monetary Union UIT
Merrill Lynch Institutional Holdings 2000 Defined Asset UIT
SunAmerica Trust Company Money Market Fund
Wachovia Special Value Fund

Attachment D – Debt Securities

Cabarrus County NC Bond, 5.3%, 2/01/11
Dallas TX C/O Bond, 5%, 2/15/13
El Paso TX CTFS Bond, 5.5%, 8/15/15
Financing Corp (FICO) Coupon Strips, 10/06/08
Merrill Lynch Note, 7%, 5/15/08
Metro DC Bond, 5.3%, 10/01/12
NM Merrill Lynch Zero Bond, 8/30/13
Rockford IL Bond, 4.375%, 12/15/06
Ysleta TX Ind Bond, 5.9%, 8/15/04

Attachment E –Insurance Policies

Equitable Life Insurance Policies (Universal Variable)
Northwestern Mutual Life (Whole Life)
Prudential Insurance Policy (Whole Life)

Attachment F

Alliance Industries, Bakersfield, CA
America Online, Dulles, VA
American Institute of Certified Public Accountants, New York, NY; Washington DC
American Honda Motor Co, Inc. Torrance, CA
AMEX Bank, New York, NY
Andersen World Wide SC, Chicago, IL
Anheuser Busch Audit Committee, St. Louis, MO
ARCO Chemical Company, Newtown Square, PA
Atmos Energy Corporation, Dallas, TX
Audiovox Corporation, Newtown Square, PA
Patrick Baird, New York, NY
Bank of America, San Francisco,CA
Bank of Montreal, Toronto, Ontario, Canada
Bank One Corporation, Chicago, IL
Banner Aerospace, Cleveland, OH
Bear Stearns, New York, NY
Beckner/The Home Insurance Company and Risk Enterprise Management, Inc., New York, NY
Big Six Accounting Firms, New York, NY, Washington, DC
Bron, Leah, Flushing, NY
Calicchio, John, New York, NY
Case, Stephen, Dulles, VA
Centura Banks, Inc., Wilson, NC
Chamber of Commerce, Washington, DC
Chancellor Capital Management, New York, NY
Charles Schwab & Co., San Francisco, CA
Cigna, Philadelphia, PA
Cigna Corp., Philadelphia, PA
Coopers & Lybrand, New York, NY
Corporate Express, Broomfield, CO
Corrigliano, Terri, Old Saybrook, CT
Costin, Roann, Boston, MA
CP-Trader.Com, Inc., Sacramento, CA
Datek Online, New York, NY
Dawson Samberg, Westport, CT
Dell Computers, Round Rock, TX
Deloitte & Touche, New York, NY
Dr. Sharon Mates, Chevy Chase, MD
Drabinsky/Gottlieb, Toronto, Ontario
Eastman Chemical, Kingsport, TN
El Paso Natural Gas, Houston, TX
Engelbrecht, Cockeysville, MD
Ernst & Young, New York, NY
Ernst & Young Technology, New York, NY
Family Golf Centers, Melville, NY

Federal Agriculture Mortgage Corporation, Washington, DC
Federal Home Loan Bank System, Pittsburgh, PA
Federal Home Loan Banks, Reston, VA
Federal Realty Investment Trust, Rockville, MD
Focus Technology, Herndon, VA
Fomon, Bobby/East West Capital Management Corporation, New York, NY
Frankino, Sam, West Palm Beach, FL
General Instrument, Horsham, PA
Genesee, Bellevue, WA
Gilburne, Adam, Paradise Valley, AZ
GlasserLegalWorks, Little Falls, NJ
Golden Bear Golf, Inc., North Palm Beach, FL
Gruntal & Co., New York, NY
HCX, Washington, DC
Humana, Louisville, KY
ICI Mutual Insurance, Washington, DC
Investment Company Institute, Washington, DC
KPMG Peat Marwick, Washington, DC; New York, NY
KPMG UK, London, England
Knight/TriMarkGroup Inc., Jersey City, NJ
Laurienti, John, Carlsbad, CA
Lincoln National Life, Ft. Wayne, IN
Lloyds of London, London, England
Louisiana-Pacific, Portland, OR
LVMH, Paris, France
Macey, Jonathan, Ithaca, NY
Macey, William, Weston, CT
Market America, Inc., Greensboro, NC
Mattone, Vincent (Deceased), Locust, NJ
McCarthy, Patrick, Rosemont, PA
Mees Pierson, Stamford,CT
Mees Pierson, NV, Stamford, CT
Merrill, Lynch, Pierce, Fenner & Smith, New York, NY
Michael Scharf, New York, NY
Mitchell Madison Group, New York, NY
Montgomery Asset Management, San Francisco, CA
Morgan Stanley Dean Witter, New York, NY
National Geographic Society, Washington, DC
NBCI, San Francisco, CA
NetDecide, Fairfax, VA
New Frontier Media, Boulder, CO
New York Banking Department, New York, NY
New York Life, New York, NY
New York Stock Exchange, Inc., New York, NY
O'Sullivan, Lamar, MO
Oracle Investment, Greenwich, CT

Ortenzio, Mechanicsburg, PA
PaineWebber, Weehawken, NJ, New York, NY
Prodigy, White Plains, NY
PricewaterhouseCoopers, New York, NY; London, England
Pulido, San Francisco, CA
Raquet,Walter, Jersey City, NJ
Dresdner RCM Global Investors, LLC, San Francisco, CA
Reliance Group Holdings, Inc., New York, NY
Ross, Stephen, New York, NY
Ross Cosmetics/TRISTAR Corp., San Antonio, TX
Saylor, Michael, Vienna VA
Securities Industry Association, New York, NY, Washington, DC
Servus Financial, Herndon, VA
SIPC, Washington, DC
Sundstrand, Rockford, IL
Tandy Corp., Fort Worth, TX
The Brass Utility, New York, NY
The Fairchild Corporation, Dulles, VA
The MacManus Group , New York, NY
TIAA-CREF, New York, NY
Tiger Management, New York, NY
Western Resources, Topeka, KS

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SARBANES FROM HARVEY L. PITT

Q.1. Shareholder Proposal Rules. In 1998, the Commission revised the shareholder proposal rules, reaching a compromise among the corporate and investor constituencies interested in the rule. I support shareholder democracy and want to be sure that investors have a fair opportunity to make shareholder proposals. Do you believe the current shareholder proposal rules are working well? If not, how would you retain the rule's core commitment to shareholder democracy and participation in the context of further rulemaking or rule interpretation?

A.1. I embrace the fundamental concept of shareholder democracy, and share your commitment to it. The Commission appropriately attempts to balance the importance of providing shareholders an ability to communicate with one another on matters of broad shareholder interest with a recognition that a minority of shareholders should not be permitted to tyrannize the majority to further their own agendas. If confirmed, I expect, in conjunction with my fellow Commissioners and the SEC staff, to consider how the current rules function, and whether the process can meaningfully be enhanced, consistent with the overarching principles the rules attempt to embody.

Q.2. Payment for Order Flow. Former SEC Chairman Arthur Levitt in a speech to the Securities Industry Association in November 1999, worried "that best execution may be compromised by payment for order flow." He added, "When a broker-dealer sells customer order flow to a designated market maker or exchange, the question of whose interest is being served—the broker's or the customer's—is squarely raised." What are your views on the practice of payment for order flow and its impact on investors? Should added or clearer disclosure to investors be required? Should the practice be curtailed or prohibited?

A.2. Payment for order flow is a multifaceted issue. In the equities markets, the SEC requires disclosure of payment for order flow, and a broker-dealer's assessment that such payments are consistent with best execution obligations. Decimalization is narrowing equities markets spreads and reducing the incidence of payment for order flow, since penny increments often make payment for orders too expensive. Since multiple listing of options became common in 1999, payment for order flow practices have arisen in the options markets, too. The issue of payment for order flow, along with other broker-dealer trading practices, are properly the subject of SEC regulatory review. If confirmed, I look forward to the benefit of thinking about these issues by my fellow Commissioners and the SEC staff in determining whether additional measures may be appropriate.

Q.3. Accounting Fraud. *USA Today* on June 22, 2001, published an article "Fuzzy Accounting Raises Flags—Investors Feel the Pain When Companies Fudge the Facts," highlighting the problem of accounting fraud. It pointed out there "have been 464 cases of financial statements being restated during the past 3 years" and that, in the year 2000 alone, "More than $31.2 billion in market value was wiped out following earnings restatement" as the stock prices

of these companies fell after the restatements. It continued, "While some mistakes are honest, the number of companies intentionally twisting the numbers to show better quarterly results is rising, accounting experts, analysts, and academics say. Pressure to meet Wall Street estimates, especially during an economic slowdown, can cause executives to use accounting tricks." What is your reaction to these instances of so-called "fuzzy accounting"? Will you continue and strengthen the SEC's current efforts to sanction accounting fraud? Also, would you work toward requiring "Plain English" financial disclosures?

A.3. Accounting fraud—deliberate misapplication of accounting principles to mislead investors—should be met with swift, vigorous, timely, and efficacious enforcement responses. But enforcement, by definition, is an after-the-fact response to problems that should be minimized or eliminated by providing investors with "real time" meaningful information. Questionable accounting practices can result from insufficient clarity regarding the principles to be applied, or the methods by which those principles should be applied, and should be avoided *before* investors are injured. The SEC and its staff should assist public companies and outside auditors at an early stage in identifying critical accounting principles and determining whether the proposed or anticipated application of those principles is consistent with professional standards. The Commission and its staff also should work with private sector standard-setting bodies to eliminate ambiguities to the maximum extent possible. If confirmed, I will consult with my fellow Commissioners, the SEC staff, the Financial Accounting Standards Board (FASB) and the accounting profession to see whether the concept of "Plain English" financial disclosures can be developed.

Q.4. Investment Company Act and Biotechnology Industry. Some of my constituents in the biotechnology industry have brought to my attention their concern regarding the status of their companies under the Investment Company Act of 1940. Some biotechnology firms wish to make extensive investments in new biotechnology companies. However, they believe that their companies, if they make such investments, would be deemed to be investment companies under the Investment Company Act and be required to register with the Commission. They question whether the Investment Company Act was intended to reach this situation. As Chairman, would you be willing to meet with biotechnology companies, such as these constituents, to discuss the application of the Investment Company Act to the biotechnology industry and to consider their views?

A.4. As I testified, Government must understand the concerns of those it seeks to regulate. The problem of whether, and when, an operating company may be deemed an "inadvertent investment company" is a subject about which the SEC has broad exemptive authority, and extensive administrative experience. If confirmed, I will work with my fellow Commissioners, the SEC staff, and the biotechnology industry to facilitate a dialogue about these issues.

Q.5. Mutual Fund Advertising. The late Commissioner Paul Carey noted in a March 2, 2001 speech entitled "Mutual Fund Performance Advertising: Is It In Overdrive?" that mutual funds some-

times advertise stellar performance results without putting those results in context and investors are misled. As Chairman, how would you seek to enhance the accuracy and completeness of performance advertising by mutual funds?

A.5. One of Commissioner Carey's lasting legacies is his advocacy for our Nation's mutual fund investors, including his efforts to promote the accuracy and completeness of mutual fund advertising. If confirmed, I look forward to considering whether, and how, to enhance disclosures of this nature.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SCHUMER FROM HARVEY L. PITT

Q.1. Mark-to-Market. The trend globally is toward fair value or mark-to-market accounting for financial institutions. However, I have seen numerous articles pointing out a disparity in accounting practices between commercial banks and securities firms. It is my understanding that commercial banks do not apply fair value accounting to the loan commitments they make and instead carry them on their books at par value, while securities firms mark their loan commitments to market. This discrepancy means that a commercial bank's income statement would reflect higher earnings than the income statement for a security firm engaging in the same activities. This disparity in accounting treatment may be confusing to investors. Is this something the SEC will examine as part of its responsibility to assure that investors receive accurate information?

A.1. The guiding principle in financial regulation, expressed in the Gramm–Leach–Bliley Act, is the concept of a "level playing field." Disparities in accounting treatment between banks and securities firms could contravene this guiding principle, and should be examined to understand the reasons for any differences in treatment that may exist, and the effects of those differences. With specific respect to requirements that certain securities be marked to market, I understand that the FASB is considering the formulation of technical guidance. If confirmed, I will consult with my fellow Commissioners, banking regulators, SEC staff, the accounting profession and affected parties to develop an appropriate approach to this legitimate concern.

Q.2. Accounting. The current accounting framework does not anticipate needs of capital market participants in an economy of rapid technological change, where investors receive information instantaneously—some accurate, some not, and where the number of households involved in the equity markets have grown substantially. The system needs to be modernized so investors can still be protected but given access to information that better enables decisionmaking. Do you believe we need to reassess the basic financial reporting model? Would you support the Garten Commission recommendations? Do you believe that information on intangible assets should be included on the financial statement?

A.2. As I testified, I believe that investors must receive meaningful financial information on a "real time" basis, to give them an accurate picture of public companies in which they place their investment dollars. The resolution of this issue centers, in part, on whether meaningful information is not being reported, or simply is

being missed, due to gaps in the requirements of the current financial disclosure model. The recent Garten report, and in particular its consideration of intangible assets, is a significant contribution to our understanding of this aspect of the issue. I believe this is an issue of great importance, not only to those who create and audit financial statements, but to all investors who rely upon this essential information. If confirmed, I look forward to rigorous and timely consultation, first with my fellow Commissioners and SEC staff, and then with accounting experts, corporate issuers and representatives of public investors, to find ways to enhance financial reporting.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR MILLER FROM HARVEY L. PITT

Q.1. The Investment Company Act and the Investment Advisers Act give the SEC very flexible authority to update these laws without the need for Congress to do so, although of course, we could. What is your view about the need to update and modernize these 60-year-old Acts?

A.1. Mutual fund assets have topped $7 trillion. With so many Americans investing so much money in mutual funds, the SEC must work diligently to maintain its excellent record of mutual fund regulation, and should undertake a review of the statutes and rules adopted to ascertain whether they are consonant with current issues and practices. If I am confirmed, I will, in consultation with my fellow Commissioners and the SEC staff, review the need, if any, for updating the current regulatory regime. It may be that most, if not all, necessary changes can be made by the Commission, without the need for additional legislation, but I will, if confirmed, keep the Committee and its staff apprised of our thoughts on these matters, and work with the Committee to ensure an appropriate regulatory framework.

Q.2. You know that Congress passed the Gramm–Leach–Bliley Act that modernized the structure of the banking and securities industries. I understand that the Investment Company Act and the Investment Advisers Act have not been updated to come into line with that very important modernization Act. Are you going to have the SEC bring those Acts up to speed with the new legislation?

A.2. I concur in the Gramm–Leach–Bliley Act's intent to impose "functional regulation" on financial services, and I look forward, if I am confirmed, to working with my fellow Commissioners and the SEC staff to assure that the 1940 Acts, and the regulations promulgated pursuant to them by the SEC, are consistent with the new legislation.

Q.3. Are you committed to preserving and increasing competition among exchanges and over-the-counter markets, especially in light of the innovation and the other benefits that such competition can bring?

A.3. I am firmly committed to preserving and increasing competition among exchanges and over-the-counter markets. If confirmed, I will seek to assure that such competition flourishes in U.S. markets, and that U.S. markets maintain their preeminence in the face of increasing global competition.

Q.4. What is your current thinking on the "central limit order book" for the Nasdaq market?

A.4. As a private attorney some years ago, I advanced the idea of a "centralized limit order book" on behalf of several large brokerage firms. Since then, the SEC adopted new rules enhancing disclosure of execution quality. If confirmed, I will consult with my fellow Commissioners and the SEC staff to learn of the experience with these rules. As a general proposition, it is of vital importance to investors that they receive the benefits of competition among diverse markets in the form of best execution.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR CRAPO FROM HARVEY L. PITT

Q.1. In a September 23, 1999, speech, former SEC Chairman Arthur Levitt said: "In the listed market, traditional structures like the archaic Intermarket Trading System must not bar participation by ECN's that remain broker-dealers . . . ECN's simply must be able to compete with traditional exchanges and dealer markets in an environment free from unfair advantages or unreasonable barriers." Do you agree with former Chairman Levitt's sentiments that we must find a way to bring the benefits of electronic agency markets to the listed environment?

A.1. I believe the ECN's should be able to compete with traditional exchanges and dealer markets in an environment free from unfair advantages or unreasonable barriers. At the same time, recognizing their differences, ECN's must be subject to the same high quality regulatory scrutiny and oversight that protect investors on the exchanges and Nasdaq. Implementing this goal is an ongoing challenge, in light of constantly changing market dynamics. If confirmed, I will endeavor to work with the other Commissioners and the SEC staff to achieve this goal.

Q.2. Technology and the introduction of the ECN's have caused tremendous changes in the competitive environment between the exchanges. What is your view as to whether the ECN's should be permitted to become registered security exchanges? Should the Commission continue to require exchanges, now changing to for-profit corporations, to maintain a majority public board, or is such a policy becoming outdated?

A.2. Several of the ECN's have applied to become exchanges, but I have not seen their applications. If confirmed, I look forward to discussing this matter, as well as the issue of public board membership on exchanges, with my fellow Commissioners and the SEC staff.

Q.3. With the structural changes in the markets such as Nasdaq's IPO and bids by electronic markets to become registered national securities exchanges, what is your position as to how to create a truly competitive environment? How can we ensure that we pursue policies that allow our markets to innovate so they can continue to lead the world?

A.3. Fair competition, transparency, price discovery, best execution, and efficiency have created a foundation of investor confidence, allowing U.S. markets to flourish. Applying these principles prospec-

tively, the SEC must allow markets to continue innovating. The Commission should allow existing structures to be modified to accommodate new business models, while assuring compliance with appropriate SEC regulatory principles. The details of these modifications can be complex and even controversial. As in other areas, I believe that the Commission should approach these issues with an open mind and in consultation with the Congress and all affected parties.

Q.4. Given the impacts of the ITS plan and the importance of electronic agency markets to the continued competitiveness of our equity markets, do you agree with the SEC's idea of applying a "trade through disclosure" rule to our Nation's equity markets?

A.4. A "trade through disclosure" rule rests on the basic, and laudable goals of price priority and effective access between markets. The Commission must assure that the national market system facilities and procedures reflect the changing conditions of today's markets. There are a variety of ways to achieve these goals and, if confirmed, I look forward to the opportunity to explore possible alternatives not only with my fellow Commissioners and the SEC staff, but also with affected constituencies, including whether broker-dealers, exchanges, ECN's, and investors.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR SUSAN M. COLLINS FROM HARVEY L. PITT

Q.1.a. Please describe your views on the SEC Regulation FD. As Chairman, would you seek to repeal or modify Regulation FD?

A.1.a. As I testified, the premise underlying the rule, that investors should not be disadvantaged by being denied equal access to material information, is unassailable. But, Regulation FD, as adopted, has engendered much debate. The Commission is now monitoring its effects. I will await the results of the current monitoring before deciding how Regulation FD is working, and whether it can be enhanced.

Q.1.b. Would you vigorously enforce Regulation FD as Chairman?

A.1.b. I believe in vigorous enforcement of all the Federal securities laws. The Commission's Enforcement Staff has stated that it will not attempt to second-guess reasonable, good faith judgments by persons who honestly attempt to comply with Regulation FD. I agree with that approach.

Q.2.a. The Permanent Subcommittee on Investigations has a long history of investigating securities fraud aimed at small investors. In 1997, when I Chaired the Subcommittee, the Subcommittee held its most recent hearing on the subject in an investigation focusing on fraud in the microcap market. During our hearing, we found that fraud among low-capitalization stocks frequently involves two different but related problems. The first is aggressive, and at times fraudulent, sales practices such as misleading customers or making unauthorized trades in their accounts. The second involves manipulation of microcap stocks by brokers, issuers, or promoters.

In his testimony, then-SEC Chairman Arthur Levitt described the Commission's campaign against fraud in the microcap market

as focusing on three aspects: Prevention, enforcement, and regulatory initiatives. What weight would you give to each of these?

A.2.a. Fraud in the "microcap" securities market, like penny stock frauds in the 1980's, poses a serious threat to investors. In recent years, there have been many large-scale schemes in which criminals bilked investors of millions of dollars through fraud and manipulation of microcap securities. Microcap fraud is a particular concern on the Internet, but the SEC has enhanced its efforts to enforce the securities laws in the new Internet environment. The regulatory challenge presented by this activity is to control this fraudulent activity without damaging the market for securities issued by legitimate small businesses. If confirmed, I will support continued vigilance in addressing fraud and abuse in the microcap market through all available means.

Q.2.b. Should the SEC institute a zero tolerance policy, banning brokers who commit one serious offense from the industry?

A.2.b. I believe the Commission should continue to take firm action against securities professionals who defraud investors. In cases of egregious fraud and evidence of recidivism, barring registered persons from the industry is appropriate. Other cases require the exercise of careful judgment before a remedial sanction is selected.

Q.2.c. Please state whether you would support or oppose the types of changes embodied in S. 1189, the Microcap Fraud Prevention Act of 1999, which I introduced in the 106th Congress.

A.2.c. I have not had an opportunity to discuss S. 1189 with my fellow Commissioners and the SEC staff, so it would be premature for me to comment on the specific legislation. As a general proposition, however, I support strong and effective measures to stamp out microcap fraud.

Q.3.a. Do you agree with the recent "investor alert" issued by the SEC to warn investors not to rely solely on analysts' reports when purchasing or selling securities?

A.3.a. I believe investors are often better served if they review information from more than one source before making investment decisions. Investor education can play an important role in clarifying investors' perception of analysts' reports.

Q.3.b. What are your views on potential problems posed by the conflicts of interest faced by analysts and whether they warrant regulation?

A.3.b. Recent accounts of analyst conflicts are troublesome. There needs to be careful analysis of the conflicts of interest in this area. The securities industry recently has taken some important and constructive first steps to address these issues. Additional consultation among the industry, self-regulatory organizations, and the SEC, with Congressional oversight, will be needed, and I look forward, if confirmed, to providing leadership in this area.

Q.4.a. What role do you see for State regulators in the regulation of securities and individuals participating in securities markets?

A.4.a. State securities regulators play an important role in safeguarding the fairness and integrity of U.S. capital markets. The Commission has long had a vital partnership with the States in

pursuing these mutual goals, including joint enforcement sweeps and investor education efforts coordinated with the North American Securities Administrators Association (NASAA), the association of State securities regulators. If confirmed, I will support appropriate efforts to foster the Commission's cooperative relationship with NASAA and State securities regulators.

Q.4.b. In what ways could the SEC assist States in the enforcement of their securities laws?

A.4.b. The SEC staff communicates on an ongoing basis with State securities commissioners to support and to facilitate State enforcement efforts. The Enforcement Division regularly shares information with States on emerging enforcement issues and on specific entities and individuals who either have engaged, or are engaging, in violative conduct. The Enforcement Division also conducts training programs that include the States. In addition, the SEC's regional and district offices periodically hold cooperative enforcement conferences with the State securities commissions, self-regulatory organizations, and local and Federal criminal prosecutors at which enforcement priorities and program initiatives are discussed. If confirmed, I will encourage the continuation of such activities.

II

106TH CONGRESS
1ST SESSION

S. 1189

To allow Federal securities enforcement actions to be predicated on State securities enforcement actions, to prevent migration of rogue securities brokers between and among financial services industries, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 1999

Ms. COLLINS (for herself, Mr. CLELAND, and Mr. GREGG) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

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A BILL

To allow Federal securities enforcement actions to be predicated on State securities enforcement actions, to prevent migration of rogue securities brokers between and among financial services industries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Microcap Fraud Prevention Act of 1999".

1 **SEC. 2. AMENDMENTS TO THE SECURITIES EXCHANGE ACT**
2 **OF 1934.**

3 Section 15(b)(4) of the Securities Exchange Act of
4 1934 (15 U.S.C. 78o(b)(4)) is amended—

5 (1) by striking subparagraph (F) and inserting
6 the following:

7 "(F) is subject to any order of the Commission
8 barring or suspending the right of the person to be
9 associated with a broker or dealer;";

10 (2) in subparagraph (G)—

11 (A) in clause (i), by striking "has omitted"
12 and all that follows through the semicolon and
13 inserting "omitted to state in any such applica-
14 tion, report, or proceeding any material fact
15 that is required to be stated therein;";

16 (B) in clause (ii)—

17 (i) by striking "transactions in securi-
18 ties," and inserting "securities, banking,
19 insurance,"; and

20 (ii) by adding "or" at the end; and

21 (C) in clause (iii)—

22 (i) by inserting "other" after "viola-
23 tion by any";

24 (ii) by striking "empowering a foreign
25 financial regulatory authority regarding
26 transactions in securities," and inserting

"regarding securities, banking, insurance,";

(iii) by striking "has been found, by a foreign financial regulatory authority,"; and

(iv) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(H) is subject to any order of a State securities commission (or any agency or office performing like functions), State authority that supervises or examines financial institutions, State insurance commission (or any agency or office performing like functions), or an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) that—

"(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, or banking; or

"(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.".

1 **SEC. 3. AMENDMENTS TO THE INVESTMENT ADVISERS ACT**
2 **OF 1940.**

3 Section 203 of the Investment Advisers Act of 1940
4 (15 U.S.C. 80b–3) is amended—

5 (1) in subsection (e)—

6 (A) by striking paragraphs (7) and (8) and
7 inserting the following:

8 "(7) is subject to any order of the Commission
9 barring or suspending the right of the person to be
10 associated with an investment adviser;

11 "(8) has been found by a foreign financial regu-
12 latory authority to have—

13 "(A) made or caused to be made in any
14 application for registration or report required to
15 be filed with, or in any proceeding before, that
16 foreign financial regulatory authority, any
17 statement that was, at the time and in light of
18 the circumstances under which it was made,
19 false or misleading with respect to any material
20 fact, or omitted to state in any application or
21 report filed with, or in any proceeding before,
22 that foreign financial regulatory authority any
23 material fact that is required to be stated in the
24 application, report, or proceeding;

25 "(B) violated any foreign statute or regula-
26 tion regarding securities, banking, insurance, or

1 contracts of sale of a commodity for future de-
2 livery traded on or subject to the rules of a con-
3 tract market or any board of trade; or
4 "(C) aided, abetted, counseled, com-
5 manded, induced, or procured the violation by
6 any other person of any foreign statute or regu-
7 lation regarding securities, banking, insurance,
8 or contracts of sale of a commodity for future
9 delivery traded on or subject to the rules of a
10 contract market or any board of trade, or failed
11 reasonably to supervise, with a view to pre-
12 venting violations of any such statute or regula-
13 tion, another person who commits such a viola-
14 tion, if the other person is subject to its super-
15 vision; or
16 "(9) is subject to any order of a State securities
17 commission (or any agency or office performing like
18 functions), State authority that supervises or exam-
19 ines financial institutions, State insurance commis-
20 sion (or any agency or office performing like func-
21 tions), or an appropriate Federal banking agency (as
22 defined in section 3 of the Federal Deposit Insur-
23 ance Act) that—
24 "(A) bars such investment adviser or per-
25 son from association with an entity regulated by

1 such commission, authority, agency, or officer,
2 or from engaging in the business of securities,
3 insurance, or banking; or
4 "(B) constitutes a final order based on vio-
5 lations of any laws or regulations that prohibit
6 fraudulent, manipulative, or deceptive con-
7 duct."; and
8 (2) in subsection (f)—
9 (A) by striking "(6), or (8)" and inserting
10 "(6), (8), or (9)"; and
11 (B) by striking "paragraph (2)" and in-
12 serting "paragraph (2) or (3)".

13 **SEC. 4. AMENDMENTS TO THE INVESTMENT COMPANY ACT**
14 **OF 1940.**

15 Section 9(b) of the Investment Company Act of 1940
16 (15 U.S.C. 80a–9(b)) is amended—
17 (1) in paragraph (4), by striking subparagraphs
18 (A) through (C) and inserting the following:
19 "(A) made or caused to be made in any
20 application for registration or report required to
21 be filed with, or in any proceeding before, that
22 foreign financial regulatory authority, any
23 statement that was, at the time and in light of
24 the circumstances under which it was made,
25 false or misleading with respect to any material

1 fact, or omitted to state in any application or
2 report filed with, or in any proceeding before,
3 that foreign financial regulatory authority any
4 material fact that is required to be stated in the
5 application, report, or proceeding;
6 "(B) violated any foreign statute or regula-
7 tion regarding securities, banking, insurance, or
8 contracts of sale of a commodity for future de-
9 livery traded on or subject to the rules of a con-
10 tract market or any board of trade; or
11 "(C) aided, abetted, counseled, com-
12 manded, induced, or procured the violation by
13 any other person of any foreign statute or regu-
14 lation regarding securities, banking, insurance,
15 or contracts of sale of a commodity for future
16 delivery traded on or subject to the rules of a
17 contract market or any board of trade;";
18 (2) in paragraph (5), by striking "or" at the
19 end; and
20 (3) in paragraph (6), by striking the period at
21 the end and inserting the following: "; or
22 "(7) is subject to any order of a State securities
23 commission (or any agency or office performing like
24 functions), State authority that supervises or exam-
25 ines financial institutions, State insurance commis-

1 sion (or any agency or office performing like func-
2 tions), or an appropriate Federal banking agency (as
3 defined in section 3 of the Federal Deposit Insur-
4 ance Act) that—
5 "(A) bars such person from association
6 with an entity regulated by such commission,
7 authority, agency, or officer, or from engaging
8 in the business of securities, insurance, or
9 banking; or
10 "(B) constitutes a final order based on vio-
11 lations of any laws or regulations that prohibit
12 fraudulent, manipulative, or deceptive con-
13 duct.".

14 **SEC. 5. CONFORMING AMENDMENTS.**

15 (a) MUNICIPAL SECURITIES DEALERS.—Section
16 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C.
17 78o–4(c)) is amended—
18 (1) in paragraph (2), by striking "act or omis-
19 sion" and all that follows through the period and in-
20 serting "act, or is subject to an order or finding,
21 enumerated in subparagraph (A), (D), (E), (G), or
22 (H) of section 15(b)(4), has been convicted of any
23 offense specified in section 15(b)(4)(B) within 10
24 years of the commencement of the proceedings under
25 this paragraph, or is enjoined from any action, con-

1 duct, or practice specified in section 15(b)(4)(C).";
2 and
3 (2) in paragraph (4), in the first sentence, by
4 striking "any act or ommission" and all that follows
5 through the period and inserting "or omitted any
6 act, or is subject to an order or finding, enumerated
7 in subparagraph (A), (D), (E), (G), or (H) of sec-
8 tion 15(b)(4), has been convicted of any offense
9 specified in section 15(b)(4)(B) within 10 years of
10 the commencement of the proceedings under this
11 paragraph, or is enjoined from any action, conduct,
12 or practice specified in section 15(b)(4)(C).".
13 (b) GOVERNMENT SECURITIES BROKERS AND DEAL-
14 ERS.—Section 15C(c)(1) of the Securities Exchange Act
15 of 1934 (15 U.S.C. 78o–5(c)(1)) is amended—
16 (1) in subparagraph (A), by striking "or omis-
17 sion enumerated in subparagraph (A), (D), (E), or
18 (G) of paragraph (4) of section 15(b) of this title"
19 and inserting ", or is subject to an order or finding,
20 enumerated in subparagraph (A), (D), (E), (G), or
21 (H) of section 15(b)(4)"; and
22 (2) in subparagraph (C), by striking "or omis-
23 sion enumerated in subparagraph (A), (D), (E), or
24 (G) of paragraph (4) of section 15(b) of this title"
25 and inserting ", or is subject to an order or finding,

1 enumerated in subparagraph (A), (D), (E), (G), or
2 (H) of section 15(b)(4)".
3 (c) CLEARING AGENCIES.—Section 17A(c) of the Se-
4 curities Exchange Act of 1934 (15 U.S.C. 78q–1(c)) is
5 amended—
6 (1) in paragraph (3)(A), by striking "any act
7 enumerated in subparagraph (A), (D), (E), or (G) of
8 paragraph (4) of section 15(b) of this title" and in-
9 serting "any act, or is subject to an order or finding,
10 enumerated in subparagraph (A), (D), (E), (G), or
11 (H) of section 15(b)(4)"; and
12 (2) in paragraph (4)(C), in the first sentence,
13 by striking "any act enumerated in subparagraph
14 (A), (D), (E), or (G) of paragraph (4) of section
15 15(b) of this title" and inserting "any act, or is sub-
16 ject to an order or finding, enumerated in subpara-
17 graph (A), (D), (E), (G), or (H) of section
18 15(b)(4)".
19 (d) STATUTORY DISQUALIFICATIONS.—Section
20 3(a)(39) of the Securities Exchange Act of 1934 (15
21 U.S.C. 78c(a)(39)) is amended—
22 (1) in subparagraph (B)(i), by striking "order
23 to" and inserting "order of"; and
24 (2) in subparagraph (F)—

(A) by striking "any act enumerated in subparagraph (D), (E), or (G) of paragraph (4) of section 15(b) of this title" and inserting "any act, or is subject to an order or finding, enumerated in subparagraph (D), (E), (G), or (H) of section 15(b)(4)";

(B) by striking "subparagraph (B) of such paragraph (4)" and inserting "section 15(b)(4)(B)"; and

(C) by striking "subparagraph (C) of such paragraph (4)" and inserting "section 15(b)(4)(C)".

SEC. 6. BROADENING OF PENNY STOCK BAR.

Section 15(b)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)) is amended—

(1) in subparagraph (A)—

(A) by striking "of any penny stock" and inserting "of any noncovered security";

(B) by striking "of penny stock" and inserting "of any noncovered security"; and

(C) in clause (i), by striking "or omission enumerated in subparagraph (A), (D), (E), or (G) of paragraph (4) of this subsection" and inserting ", or is subject to an order or finding,

1 enumerated in subparagraph (A), (D), (E), (G),
2 or (H) of paragraph (4)";
3 (2) in subparagraph (B)—
4 (A) by striking "an offering of penny
5 stock" each place it appears and inserting "any
6 securities offering"; and
7 (B) in clause (iii), by striking "such a per-
8 son" and inserting "a person as to whom an
9 order under section 21(d)(5) or subparagraph
10 (A) of this paragraph is in effect"; and
11 (3) by striking subparagraph (C) and inserting
12 the following:
13 "(C) For purposes of this paragraph—
14 "(i) the term 'noncovered security' means any
15 security other than those described in paragraphs
16 (1) and (2) of section 18(b) of the Securities Act of
17 1933; and
18 "(ii) the term 'participation in an offering of
19 noncovered securities'—
20 "(I) means acting as a promoter, finder,
21 consultant, or agent, or engaging in activities
22 with a broker, dealer, or issuer for purposes of
23 the issuance of or trading in any noncovered se-
24 curity, or inducing or attempting to induce the
25 purchase or sale of any noncovered security;

"(II) includes other activities that the Commission specifies by rule or regulation; and

"(III) excludes any person or class of persons, in whole or in part, conditionally or unconditionally, that the Commission, by rule, regulation, or order, may exclude.".

SEC. 7. COURT AUTHORITY TO PROHIBIT OFFERINGS OF NONCOVERED SECURITIES.

Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following:

"(5) COURT AUTHORITY TO PROHIBIT PERSONS FROM PARTICIPATING IN OFFERING OF NONCOVERED SECURITIES.—

"(A) IN GENERAL.—In any proceeding under paragraph (1), the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person that violated section 10(b) or the rules or regulations issued thereunder in connection with any transaction in any noncovered security from participating in an offering of a noncovered security.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'noncovered security' means any security other than those described in paragraphs (1) and (2) of section 18(b) of the Securities Act of 1933; and

"(ii) the term 'participation in an offering of noncovered securities'—

"(I) means acting as a promoter, finder, consultant, or agent, or engaging in activities with a broker, dealer, or issuer for purposes of the issuance of or trading in any noncovered security, or inducing or attempting to induce the purchase or sale of any noncovered security;

"(II) includes other activities that the Commission specifies by rule or regulation; and

"(III) excludes any person or class of persons, in whole or in part, conditionally or unconditionally, that the Commission, by rule, regulation, or order, may exempt.".

1 **SEC. 8. BROADENING OF OFFICER AND DIRECTOR BAR.**

2 Section 21(d)(2) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78u(d)(2)) is amended—

4 (1) by striking "of this title or that" and insert-
5 ing ", that"; and

6 (2) by striking "of this title if" and inserting ",
7 or the securities of which are quoted in any
8 quotation medium, if".

9 **SEC. 9. VIOLATIONS OF COURT ORDERED BARS.**

10 (a) IN GENERAL.—Section 21 of the Securities Ex-
11 change Act of 1934 (15 U.S.C. 78u) is amended by adding
12 at the end the following:

13 "(i) BAR ON PARTICIPATION.—It shall be unlawful
14 for any person, against which an order under paragraph
15 (2) or (5) of subsection (d) is in effect, to serve as officer,
16 director, or participant in any offering involving a non-
17 covered security (as defined in subsection (d)(5)(B)) in
18 contravention of such order.".

19 (b) CONFORMING AMENDMENT.—Section
20 21(d)(3)(D) of the Securities Exchange Act of 1934 (15
21 U.S.C. 78u(d)(3)(D)) is amended by inserting "or relating
22 to a violation of subsection (i) of this section," before
23 "each separate".